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Public Utilities Fortnightly

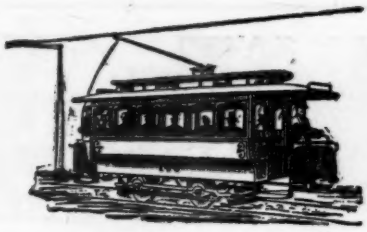
VOLUME XII — *September 14, 1933* — NUMBER 6

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS
PRICE, 75 CENTS A COPY — ANNUAL SUBSCRIPTION, $15.00

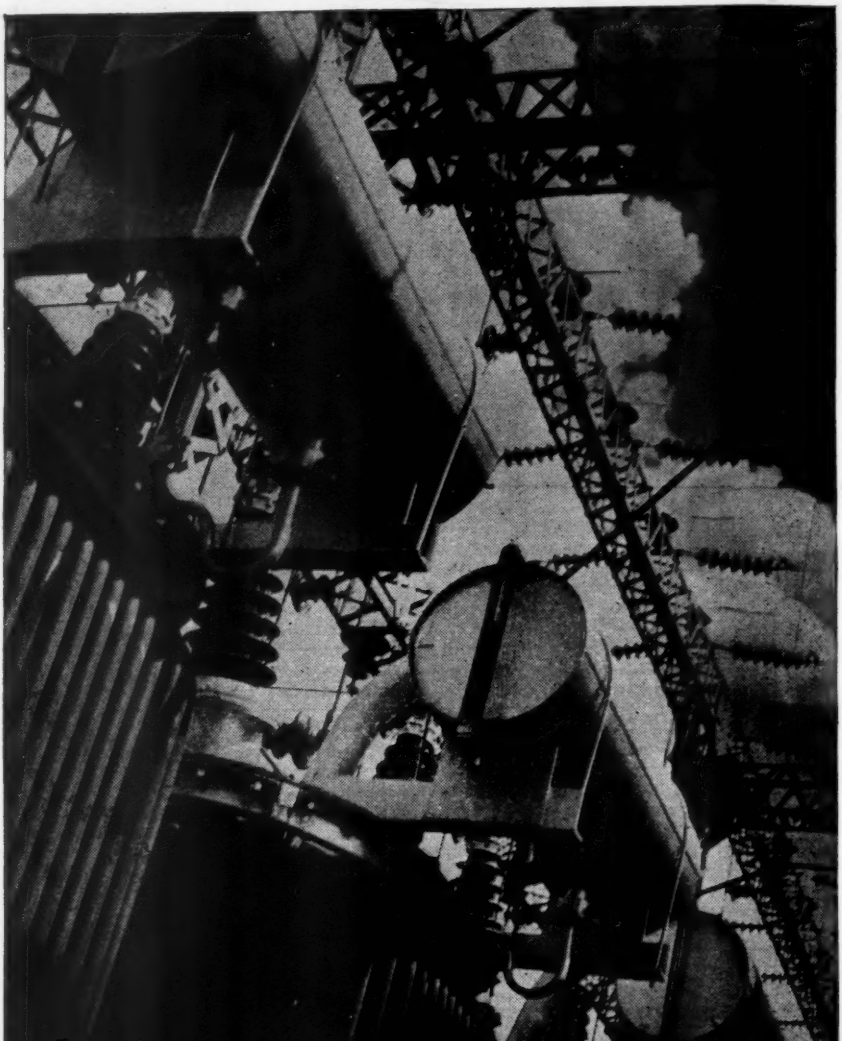
PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, now issued in conjunction with *Public Utilities Reports, Annotated,* such reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users. Publication office, Wilder Building, Rochester, N. Y.; executive and editorial offices, Munsey Building, Washington, D. C. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879; copyright, 1933, by Public Utilities Reports, Inc. Printed in U. S. A.



Public Utilities Almanack

SEPTEMBER

14	T^h	The first train equipped with Westinghouse air brakes drew out of Pittsburgh, 1868. The first alternating current transmission lines were built in Oregon, 1889.
15	F	GOV. ROOSEVELT of New York declared for state development of power, 1929. Steam railroad transportation in England was inaugurated, 1830.
16	S^a	"Fast mail" trains were introduced by the U. S. Post Office, 1875. JAMES J. HILL, railroad builder, was born in Canada, 1838.
17	S	DENNIS PAPIN, French scientist, invented the piston, 1701. RAY L. WILBUR, Secretary of the Interior, started work on Boulder Dam, 1930.
18	M	The first regular stagecoach from San Francisco speeded into Denver, 1862. A hurricane in Florida did enormous damage to telephone and power plants, 1926.
19	T^u	The art of illumination was advanced by ARGAND'S circular wick, 1784. *¶ The public utility commissioners will convene in Cincinnati, Oct. 10, 1933.*
20	W	United States Congress passed the Illinois Central Land Grant Act, 1850. The Pennsylvania Railroad began the operation of trains hauled by horses, 1832.
21	T^h	JOHN L. MACADAM, Scottish inventor of macadamized roads, was born, 1756. Stagecoach service advertised in first U. S. newspaper, *American Daily Advertiser*, 1784.
22	F	MICHAEL FARRADAY, discoverer of electro-magnetic induction, was born, 1831. The desk type of telephone was first put into use, 1895.
23	S^a	EARLE L. OVINGTON piloted first plane to carry U. S. Mail, 1911. EMPEROR CLAUDIUS began the construction of the Roman aqueduct, 54 A. D.
24	S	The famous *DeWitt Clinton* locomotive started its first passenger run, 1831. Financial panic seized the New York Stock Exchange on "Black Friday," 1869.
25	M	ALFRED VAIL, telephone pioneer and associate of S. F. B. MORSE, born, 1807. *¶ The American Gas Association will convene in Chicago today—Sept. 25, 1933.*
26	T^u	The Federal Trade Commission was created by U. S. Congress, 1914. TREVITHICH, Russian inventor, demonstrated his steam locomotive, 1803.
27	W	STEPHENSON'S locomotive in England hauled the world's first passenger train, 1825. ZEPPELIN built his first power-driven, passenger-carrying balloon, 1900.



Wm. M. Rittase

The Armor of Jove

Public Utilities

FORTNIGHTLY

VOL. XII; No. 6 SEPTEMBER 14, 1933

The Crisis Confronting the Commissions

A warning—and two constructive suggestions

State regulation is at the crossroads. Subjected to both political pressure and to popular clamor for lower utility rates, and now faced with the prospect of further Federal regulation of utilities heretofore exclusively under the authority of the state commissions, as a part of the NRA program, the present system of state regulation is on trial. What the state commissions must do to establish their public usefulness on an enduring basis is set forth in this frank article by a man who served for nine years as chairman of the public service commission of New York—

WILLIAM A. PRENDERGAST

As one views the realm of business today, one is tempted to paraphrase a saying of the poet and exclaim, "I see a new world in my dream!" Certainly this is a new world in which we are living and gaily experimenting; just what kind of new world this is going to be, no reasonable person is willing to hazard a guess. Many are wondering particularly just what is in store for the utilities in this rejuvenated America which we are trying to create—a form of speculation which is giving rise to some misgivings of the fate of the regulative principle in our public affairs.

Months ago I stated:

> "The fact is that regulation of utilities by state commissions is a new and surprisingly effective contribution to government. It is an institution clearly indispensable if we are to cope successfully with the present economic and business organization of the country. It should be perfected and strengthened. It cannot be allowed to fail or break down."

This is still my earnest conviction.

But one cannot be unmindful of the fact that recently there have been a number of disturbing developments which indicate that regulation is being pressed to the wall. In fact, it has been asserted that today regulation is at the crossroads, and in what direction it is going to turn, whether on a safe or a hazardous road, is uncertain and debatable.

THERE have been more startling suggestions of innovations in our economic and industrial structures and practices within the last six months than ever before in our national history. To state this is not to imply opposition to, nor criticism of, what is being proposed; it is simply to record a fact. That the present status of the utilities and regulation is being affected by this testing period is unavoidable, but the manner in which the utilities and regulation meet the onslaught of this new order will have a far-reaching effect upon the future of both.

This question, therefore, arises:

Is regulation prepared to encounter the demands of the times with that firmness that would indicate strength as an institution—or is it to be swept along with the tide?

Unfortunately, it would appear that regulation has few powers of resistance. It is not too much to say that instead of meeting with determined courage many of the intemperate demands of the intemperate-minded, regulation is running to cover.

BEFORE considering the demands made upon regulation, resulting from the feverish state of the public mind, it might be well to ask whether regulation has ever buttressed itself with a body of principles that would be the best defense against any invasion of the rights and dignity that should attach to its work.

The late F. W. Stevens, a distinguished lawyer of western New York, was the first chairman of the public service commission (2nd district) of that state. After retiring from the commission, he said, in an article published in *The Evening Post* (New York) April 1, 1914:

> "It is hardly too much to say that the success or nonsuccess of regulation by commission depends mainly on whether it works out and establishes such standards the adoption of which will in time prevent the occasion for dispute. If the commission is erratic in its judgment, varying in its conclusions upon substantially similar facts, moved by impulse or favor, fear or prejudice, clearly its main function is ignored and it becomes a tribunal with plenty of legal, but no moral, power. In the long run commission regulation must be judged by the standards which it inculcates in matters of discretion and the fidelity with which it adheres to them."

And again:

> "Experience and reflection do not seem to have persuaded everyone that political considerations in either the appointment or conduct of a commission are destructive, and hence wholly incompatible with the permanent usefulness and success of public service commissions. If such considerations are to prevail permanently, some other method of regulating corporate conduct will be imperatively required."

These were the reflections of an unusually able public service commissioner, and were expressed nineteen years ago, after he had left his public duties behind him. He was deeply interested in the success of the regulatory idea, and concerned about its future.

To what extent is regulation itself responsible for the present attitude of those who do not hesitate to attack its

inherent prerogative, to be regarded as an impartial tribunal not subject to the whims and demands of the unthinking, especially of those seeking political advantages?

Has regulation, as suggested by Mr. Stevens, established standards of conduct, which would protect the integrity of its work?

Conceding all that is claimed for the merits of regulation thus far (and it is a great deal) it must be admitted that there has been a failure to create the necessary standards. That this has been due to timidity in many instances and an indifference to the necessities of the case, is true. Many commissions have sought what may be called the easiest way out of all difficulties. That this is the surest way to leave regulation open to unwarranted demands does not seem to have occurred to them.

I WILL suggest two standards which are indispensable to high-minded and enduring regulation, standards which would identify beyond argument the place the commissions should occupy and insist upon occupying in our political and administrative economy.

FIRST; *the commissions should be agencies independent of political interference from any quarter—and this means governors of states, municipal governments, and civic organizations.*

The commissions have too often acquiesced in the wholly mistaken theory that their principal function is to represent only the ratepayers and not all interests involved; in fact, many of the commissions have bowed to this false concept of their duty, and always to curry a certain species of public favor. But when a time like the present arrives, and mob psychology asserts itself, the commissions learn that they have gained nothing by posing as the defenders solely of ratepayers, and that these same ratepayers are ready to pillory the commissions just as they would the utilities. What advantage have the commissions acquired from their failure to defend their true position as the representatives of the entire public and no one part of it? Commissions would do well to observe an old English proverb which says, it is "better to rule than be ruled by the rout."

SECOND; *the commissions should establish a definite system of determining a rate base—and adhere to it.*

Time and again rate cases have been decided by commissions on grounds that were indefinite, simply for the

¶ "THE *trend of the times indicates a reconstitution of our industrial structure, which may have a far-reaching effect upon the utilities and also upon the regulative principle. Now an overshadowing policy has been asserted in the National Industrial Recovery Act, popularly referred to as the NRA. This means the incursion of the Federal government into all branches of business,* INTERSTATE *and* INTRASTATE."

purpose of avoiding the question of valuation, which some commissions did not have the courage to face. This is not true of all commissions, by any means, but it is true of most. The impolicy of this is now apparent. If rates were decided on specific and fair valuations there would be precedents and standards established which would be the bases upon which rates could be changed downward or upward, as revenues and expenses warranted. This would be not only a protection for the utilities but it would be a bulwark for commissions when unfair demands were made upon them, coupled as they invariably are, with accusations against the good faith and integrity of the commissions, charges which in nearly every instance are wholly unwarranted.

Public disfavor towards the utilities and commissions is the product in most cases of a misunderstanding of rates, and the consequent feeling that the ratepayers are being overcharged. Some commissions have had the prescience to establish rates which equitably distribute the cost of rendering service and afford to patrons in proportion to their usage an encouragement to use more gas, electricity, or telephone service. But many commissions, some representing the largest states and, therefore, the greatest number of customers, are afraid to do this, on the ground that it makes the so-called "little fellow" pay what seems to be a heavy charge for the limited amount of service he requires. This attitude dismisses equity as a consideration in rate making, and subverts the primary function of regulation, which is to enforce equity. The consequence is, that the service-using public knows that the commissions have no definite principles or standards on this subject of rates, but are susceptible to mob psychology.

THAT the foregoing may not be considered a dragnet indictment, it is just to say that the Maryland commission has striven to face the question of valuation in a forthright way. Unfortunately, the number of very important cases in which large issues arise before that commission is comparatively small, but Maryland's example has been encouraging.

For consistent adherence to a fairly definite program of action, which is a recognition of standards, the department of public utilities of Massachusetts may be regarded as exemplifying a reasonably determined policy. I do not agree with the policy of that commission in respect to valuation; but that is unimportant as far as this discussion is concerned. I do agree with that commission, and cheerfully commend it, for at least having a policy, which all applicants before it know that it proposes to follow. As Chairman Attwill has said, "Unless driven to it, we have paid little attention to valuations in Massachusetts." It is not necessary here to describe the general policy of that department, but I believe it is recognized by the public that the Massachusetts commissioners know what they want to do, and proceed to do it. This is more than could be said for some other commissions. The Massachusetts commissioners have not been afraid to impose "service charges," but the very suggestion of a service charge seems to put other commissions into a panic.

Two Indispensable Standards of Enduring Regulation:

"FIRST; *the commissions should be agencies independent of political interference from any quarter—and this means governors of states, municipal governments, and civic organizations.*

"SECOND; *the commissions should establish a definite system of determining a rate base—and adhere to it.*"

ALL signs indicate that state regulation is being pressed to the wall.

The first notable instance of this was pressure brought to bear upon the public service commission of Wisconsin more than a year ago by the then Governor LaFollette of that state. The "Economic Emergency Temporary Rate" decision against the Wisconsin Telephone Company was the result of that pressure. Since then, and especially in New York state during the last six months, there have been insistent demands from city governments, civic bodies, and professional agitators, that in view of the depression, rates should be reduced. The consequence is that the commission in that state, undoubtedly urged on to do so by Governor Lehman, has instituted statewide actions against the electric and gas utilities, and has been holding hearings for the purpose of fixing what are to be called "temporary rates." In no case will these rates be upward; they must all be downward. The commissions which are engaged in this regulative pastime will all find reasons, no doubt, for decreeing reductions. But are they moving under pressure from without? Are they obeying some master's voice and not their own conscientious initiative? If rates should be reduced at this time, why did not the commissions voluntarily initiate the proceedings? Why did they have to wait until mayors' conferences, civic organizations, preposterous inquiries by district attorneys, and the political exigencies of governors forced the task upon them? If the rates should have been reduced why did not the commissions reduce them? If the rates were wrong they should be changed.

When commissions (and there are a number of them) wait until threats

and demands are thrust at them, force is lent to the belief that the commissions have not been functioning efficiently.

OUR government is carrying on the most stupendous campaign ever undertaken in this country or elsewhere to shorten hours of labor, promote employment, create purchasing power, induce a wider distribution of goods, and raise prices.

The question of raising prices has a direct bearing upon the present program to which public service commissions are lending themselves, and that is to reduce the prices of public service corporations.

Are the costs of public services too high? If so, why have the commissions permitted them to remain at their present levels? If they were not or are not too high, what possible excuse can there be for forcing them down, when the national slogan is to raise prices?

In such a contingency public service commissions should be prepared to deal justly with the corporations; not inflict upon them undue hardships. If shorter hours of service and more employees will raise costs (and this is axiomatic) what justification can there be for reducing revenues at this time?

I am offering no defense for utility rates that have been too high during the past year; they should have been reduced, and it was the duty of the commissions to reduce them. In every case where such reductions were effected by the commissions, they should have universal commendation, and I gladly offer my contribution of praise to them.

THE only possible basis upon which a commission could justify reductions in many rates at this time would be that it proposed to reduce the rate of return upon the investment, to 6 per cent or lower. It is a fact that some commissioners have announced recently that it was the intention to confine utilities to a 6 per cent return, and it has been intimated that even a lesser return was sufficient. What is a fair rate of return has always been, and always will be, a debatable question. This proposed reduction has a very direct relation to two questions; one is the diminution of income to those who have investments in utility stocks; the other is the effect of reduced returns upon the ability of utilities to finance extensions to service. Conceding that the plant capacity of the utilities is more than adequate under present demands for service, there will come a time, we all hope, when a genuinely prosperous America will require even greater service than prior to 1931. It is the duty, not a discretionary privilege, of public service commissions so to regulate the earnings of the utilities that the latter will be enabled to command necessary capital on the best possible terms.

And how about the demands for reductions in utility rates on the ground that much unemployment exists and that hardship prevails among many of our people? It should be determined that such reductions will aid the general economic conditions of the country. If this would be the result then even sacrifices should be made for the general good. But would any such result be achieved? This very point was argued in the Wisconsin Telephone

Company Case. Professor James C. Bonbright of Columbia University, a witness for the public service commission, was asked these questions:

QUESTION: "Then you agree there is no cut of utility rates economically possible that would cure the depression?"
ANSWER: "No."
QUESTION: "On a national scale?"
ANSWER: "On a national scale."
QUESTION: "Would you be of the opinion that a local cut limited to the state of Wisconsin for one utility or a half-dozen utilities, would be of greater value than a national cut, economically speaking?"
ANSWER: "Of greater value to Wisconsin than a national cut to the nation?"
QUESTION: "No, I mean to the nation."
ANSWER: "No, it would be of less value to the nation."

The views of this exceedingly able student of economics are certainly entitled to consideration.

BUT what of the attitude of many of the utilities during this period of economic depression, unrest, and changing concepts of government? Have they been alert to propitiate the public by demonstrating that where changes in rates are possible they are willing to make them without official or public demand and pressure? Has their relation to the regulatory bodies been coöperative and candid? Are there not many instances where the utilities have sought to hold all the advantages they had, even though some concessions in rates were possible, and only surrender a point or two when forced to do so, by public outcry or commission action? There have been some of the latter class, and they must realize that they have not advanced their reputations for public spirit, nor won the confidence of their patrons. Some will cynically say that there is no use in endeavoring to win the good-will of customers, that many of the latter are antagonistic to the corporations, and that no manifestations of friendly dealing will win their friendship. There are companies that have established excellent relations with their customers. They have accomplished this by indicating that they believe there is a mutuality of relationship between the public and themselves; such companies have no fear of commissions or of agitators. On the other hand, such companies as a rule maintain the best of relations with the commissions.

ANOTHER condition which has militated against the utilities, and left them open to undue attacks from different quarters, is their failure to study their problem from the viewpoint of the mutual interests they represent.

It should be needless to say that standardized forms of rates would be conducive to a better public appreciation of the work of the utilities. But if, instead of uniting in behalf of, or defense of, uniform rates, each and every company is seeking those forms

¶ "Is *regulation prepared to encounter the demands of the times with that firmness that would indicate strength as an institution—or is it to be swept along with the tide? Unfortunately, it would appear that regulation has few powers of resistance.*"

which will obtain for them temporary surcease from commission action, the public knows and the commissions know that they are dealing with many disunited entities, with all the advantages that this grants to the commissions.

I have companies in mind who realize full well what are the best and proper forms of rates. They know that such forms will be best for the customers and best for them, in promoting a larger use of electricity or gas, increasing their revenues, stabilizing their operations, and also enabling them to give better rates, with consequent satisfaction to their customers as time goes on. Instead of resisting the efforts of commissions to force upon these utilities rates which the commissions think will be popular (for the favor of the "little fellow") they weakly submit to coercion which they know will result to the detriment of their customers and themselves. The effect of all this is to undermine their standing with the public and the commissions. What doth such a policy profit the utilities?

In order to avoid the great expense in money and time which is an unavoidable consequence of a protracted rate proceeding, the commissions have been forced to institute negotiated rates. There should be no objection to this policy on condition that the commissions have before them adequate data representing proper bases for rate making.

But have they?

This would depend upon the commission recognizing or establishing a rate base which could be utilized as time went on, subject to the changes that had taken place in the company's affairs and which should be reflected upon its books. This also implies that the books are an accurate reflection of the facts of the business. The commissions find it difficult to summon such data to their aid, as they are not able in many cases to maintain those periodic examinations of property and books that are necessary. For this they are not to blame, as they are not given the financial support by the states. Therefore, many negotiated rates are not based on any factual data; usually they represent what the commissions think will enable them to satisfy public clamor, and the company trades the lowest reduction it can induce or cajole the commission into accepting. But this is not the purpose or function of regulation. The latter implies that the public will get what are proper rates based upon known, demonstrable *facts* of public record. There has been some but not sufficient discussion or movement in the establishment of rate bases. I am not arguing for any particular form of rate base; in times past I have advocated the finding of rate bases for all the companies within a commission's jurisdiction. Neither the companies nor the commissions have exhibited any enthusiasm for the plan—the former because they prefer the fortuitous advantages that may come through inaction, and the commissions because they fear to express themselves with definiteness on the question of valuation.

The trend of the times indicates a reconstitution of our industrial structure, which may have a far-reaching effect upon the utilities and

also upon the regulative principle. Now an overshadowing policy has been asserted in the National Industrial Recovery Act, popularly referred to as the NRA. This means the incursion of the Federal government into all branches of business, *interstate* and *intrastate*.

State regulation has been based upon the principle that the state, through its commission, had the power to direct the general policies reflected in the capitalization, rates, and service of the local utility. This power does not extend to management, although sometimes there is a slender twilight zone between regulation and management. Now we find that the NRA (on August 12, 1933, to be exact) asserts that there are no lines, state or otherwise, that separate it from the direction and control of hours of labor, employment of additional labor, and at least minimum wages.

The courageous attitudes of the Consolidated Gas, Electric Light and Power Company of Baltimore and of The Hartford Electric Light Company in objecting to the over-lordship of the NRA on the ground that they are already under the control of the Maryland and Connecticut public service commissions, respectively, has called forth a reply from the Federal authority in question which leaves no doubt that the NRA is prepared to maintain what it believes to be its full and complete supremacy even against state jurisdictions. This expression of its dominion is put forth, despite the intentions of the utility companies mentioned, to preserve a system of hourly service and rates of compensation that should at least be regarded as worthy of consideration.

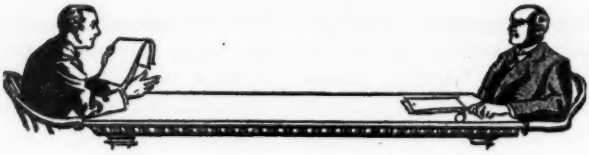
With the socializing betterments contemplated in the National Industrial Recovery Act I am in complete agreement, but it would be a reflection upon our national capacity for right action if the socialization of industry must be forced upon us, at the sacrifice of the autonomy of the states in matters that are exclusively of state concern, such as the control of its utilities.

THE observations set forth in this review lead to certain conclusions:

1. That commission regulation has not created for itself that position of primacy in our public affairs, which was designed for it by its earliest and ablest protagonists, among them the present Chief Justice of the Supreme Court of the United States, Charles E. Hughes.
2. That the utilities have not won for themselves that place of favor in the public estimation, which it was their opportunity to acquire.
3. That the overwhelming developments in our recent Federal legislation indicate that the states are about to lose their authority in many matters of strictly local concern.
4. That the diminution of state authority in matters of utility regulation will mean the impairment of the functions and province of the state commissions.

These considerations represent an issue which is of the deepest political significance as it affects the integrity of our constitutional structure.

In the problems presented by these conclusions there is a challenge to the commissions and the utilities which they cannot ignore.



PUBLIC UTILITY AND PROGRESSIVE PROPAGANDA IN THE

Congressional Record

What a critical survey of one month's issue of the official organ of Uncle Sam's legislative body reveals to a citizen—and taxpayer.

BY HERBERT COREY

THERE are only a few avowed Progressives in Congress. A dozen, twenty, not more. Yet they occupy space in the *Congressional Record* for the reprinting of newspaper and magazine articles, speeches, reports, and other material which support their plan to socialize this country which is totally disproportionate to their numbers. After all, the *Congressional Record* was designed to be precisely what the name implies—a record. What it in fact is too frequently is a medium through which, at the cost of the public, columns of arguments are printed in support of the most illiberal type of so-called liberalism.

WHEN I was one of the *jeunesse dorée* on the board walk which then ran from Paddy Crow's saloon to the Graham House in Casper, Wyoming, an old man named Marsh operated a refined faro bank in the financial section. It was refined because Old Man Marsh had no hesitation in curling a .45 calibre sixshooter over the head of any one who lost his grip on culture in the Old Man's store. Now and then a cow waddy would lose his year's takings over the Old Man's board;

"Well, I'm busted," he would announce cheerfully. "Gimme a little breakfast money, Marsh."

"Not a short bit," the Old Man would respond sourly. "Go eat hay."

The cow puncher would stomp out angrily and spend the rest of the evening in muttering to his friends about the Old Man's meanness. That was what that wrinkled financier wished.

"The way to get business for a faro bank," he allowed, "is to make 'em hate you. Then next time they get a little money and come to town they bend right around to my place, thinkin' they can skin me."

The Progressives in Congress seem to be operating on the same plan. Never do they give up any breakfast money. During the Hoover administration they continually shouted for Progress. The Roosevelt administration has run them ragged trying to keep up with it. If one of them had

introduced any one of several measures which have become law under President Roosevelt his friends would have spread their handkerchiefs to protect him from the eyes of the gallery while the kindly attendants adjusted the straps. But they are not satisfied. They continue to like Mr. Roosevelt personally, they say, but they shake their heads at some of his ideas. In continuing to progress they are being compelled to progress sidewise. But if they lost their identity as complainants they would be merely lost in the herd, and that would never do.

It is a good system when it works.

BETWEEN times in the latest session of Congress they burdened the poor old *Congressional Record* with editorials and other previously printed screeds about themselves and their doctrines.

There is nothing to be done about that. If an effort were made to take away this privilege, time and eternity would flit by before they stopped talking about it. Likewise, if any of the thirty Senators who are presumed to be in direct opposition to the Progressives were to take up that much space in the *Congressional Record* the Progressive outburst would make Vesuvius in eruption look like a dish of spilled milk.

There is nothing to be done about that, either.

I DO not know precisely what share of the *Congressional Record* is occupied by the contributions of the Progressives. By this is not meant their speeches on the floor of either House, nor any participation in debate, nor the psalms lauding their own charms and decrying the honesty of other people. What I have in mind is the open and plainly labelled propaganda which they are continually having printed, either as a part of the proceedings or in the Appendix. It never happens that they print anything which illuminates the other side of the case they are making. From time to time, for example, articles setting forth the Progressive side of the attack on the utilities have been printed in the PUBLIC UTILITIES FORTNIGHTLY and on several occasions they have been inserted in the *Record*. Has any legislator asked permission to include in the *Record* an article which embodied a point of view at variance with Progressive doctrine? He has not.

"I think I shall have Upton Sinclair's book about William Fox printed in the *Record*," said the secretary to a Senator the other day. "It has a lot of hot stuff in it about banks."

He is a lively, forceful, reddish sort of a radical, who has been accused of pumping his Senator full of explosive ideas. This probably does him something more than justice; his Senator manufactures his own ideas in his own plant, but his secretary unquestionably has influence with him. If he convinces the Senator that Sinclair's criticism of the banks in the case of William Fox might be of propaganda value if printed in the *Record* there is no doubt that he could have it printed in full. Other less readable tales are printed in it frequently.

THE fact that the *Congressional Record* costs the taxpayers about $4,000 a day is not vital at this time

of heavy spending; it is merely one of the incidents of a situation which is so cock-eyed that the law gives the widow of a general officer a $30 monthly pension, and a $45 pension to the widow of a forest camp worker who inadvertently stepped under a falling tree. No one will question that some kind of a record should be kept of the cantrips of Congress. The copies of the *Congressional Record* printed during the recent extra session might some day have a value to collectors; I am having my own copies bound in asses' skin and beaded with rattlesnake hide. But while the record of what Congressmen do and say on the floor may be of importance to the voter and taxpayer, it is at least doubtful whether a general review of the journalistic, political, and crank vagaries of the day is worth paying for. It may be conceded that the privilege of "extending his remarks" in the Appendix granted to Congressmen who might otherwise take up too much time on the floor is a saving of money and hours. But when a Congressman pops into the *Record* columns of some one else's argument for his case, it really seems that he is stretching congressional privilege too far.

DURING a single month (May, 1933, to cite an illustration) there were ten attacks on the utilities and arguments in favor of public ownership reprinted in the *Record*. An advantage of this system is that these reprints may again be reprinted, in which case credit is often given to the *Congressional Record*. Small town editors and peach-crate orators have been known in good faith to say that "we find in the *Congressional Record*." This gives the reprints a semblance of authority. The guinea's stamp does not add to the value of the gold, but when Mr. Burns wrote his piece he forgot that without the stamp he might have had trouble in passing his guinea. When a stranger to the process, for example, is told that he will find in the *Congressional Record* a statement of the amazing facts about "taxless towns" he might accept unconsciously the assumption that there are such things as taxless towns, whereas there are none. The point has been argued before and will not be repeated, but the adage that only death and taxes cannot be escaped still holds true.

I do not know that there were more attacks on the utilities printed in the *Record* during the month of May than during any other month. Or any fewer, for that matter; any one who is interested may easily check up. It is possible, too, that replies were made to some of these attacks by the thirty Senators who (according to their colleagues of the Progressive group),

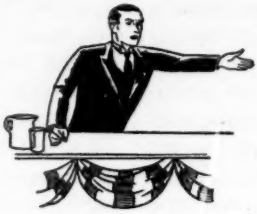
¶ *"THERE are only a few avowed Progressives in Congress. A dozen, twenty, not more. Yet they occupy space in the* CONGRESSIONAL RECORD *for the reprinting of newspaper and magazine articles, speeches, reports, and other material which support their plan to socialize this country which is totally disproportionate to their numbers."*

are not convinced that a man who manufactures electricity necessarily wears horns and hoofs. It merely happens that I did not see any such replies. The *Record* has been practically turned over for propaganda purposes to the Progressives so far as the utilities are concerned. Either the thirty Senators who are presumed to be opposed to the Progressives think it is not worth while to reply to such attacks, or they have grown tired replying, or they think that from a political point of view replies do not pay. This is the more remarkable when it is considered that the constant cry of the Progressives is that the utilities buy public men. If they have bought any Senator they have not been given their money's worth.

ON May 3rd Mr. Bankhead of Alabama made a speech about Muscle Shoals. In order to support his thesis he gained permission to have reprinted in the *Record* almost eight columns about the St. Lawrence waterway project, which was not up for discussion at that time. The St. Lawrence scheme will come before the Senate for discussion some time in the future, but the matter reprinted at Mr. Bankhead's request consisted of excerpts from a book and a speech by President Roosevelt when he was governor of New York, together with the text of the Power Authority Act of New York State, from which he had previously quoted at length. All of this material, of course, is readily available at every public library. In the Library of Congress a very efficient legislative research department can produce anything of the sort at a moment's notice, and is continually doing so for the information of the Congressmen. Nothing was gained by the republication of the Power Authority Act in the *Record,* except as it had some value as propaganda. This was followed on the same day by seventeen columns of the statement made to the House Committee on Military Affairs by Senator Homer T. Bone of the state of Washington, in which he criticized certain power companies on the Pacific coast. This was inserted at the demand of Senator George W. Norris of Nebraska, the most inveterate proponent of government ownership.

This statement, of course, was readily available to any one interested in the records of the House Committee on Military Affairs, but through the $4,000-a-day *Record* it was given wider publication and a seemingly greater authority. In the same issue Senator Dill of Washington has reprinted portions of a speech delivered over a nation-wide radio hookup by Secretary of Agriculture Wallace. If there were actual news value in that speech it had certainly been sent to every American newspaper by the various press services; if there was no news in it then it must have been used only for its argumentative worth; it could not be said that it was saved from oblivion by the insertion in the *Record.* All cabinet officers direct competent bureaus filled with men whose sole duty is to save the speeches of their chiefs from oblivion.

IN the issue of May 4th Senator Norris resumed his criticism of the United States Chamber of Commerce. In it he included a long state-



The *Congressional Record* as a Medium of Political Attack

"THE RECORD has been practically turned over for propaganda purposes to the Progressives so far as the utilities are concerned. Either the thirty Senators who are presumed to be opposed to the Progressives think it is not worth while to reply to such attacks, or they have grown tired replying, or they think that from a political point of view replies do not pay. This is the more remarkable when it is considered that the constant cry of the Progressives is that the utilities buy public men. If they have bought any Senator they have not been given their money's worth."

ment, prepared by some one whose identity is not revealed and whose motives are, therefore, unknown. Mr. Norris stated that during the debate on the Muscle Shoals bill "some information reached me showing the connection of the United States Chamber of Commerce with the National Electric Light Association, reached me at a time when I had no opportunity to examine it and so I did not use it." It is evident, of course, that Mr. Norris accepts full responsibility for the statements made in this anonymous—so far as the public is concerned—contribution. No Senator replied, no one asked questions, no one criticized Norris for packing the *Record* with the arguments of an unknown who was certainly not a Senator and entitled to a hearing. No Senator could criticize that. They all do it.

On May 8th Senator Norris discovered an editorial in *The Birmingham News* in which the Muscle Shoals bill was criticized. The Muscle Shoals bill was not under discussion at the time, but Mr. Norris felt much as a young mother would toward a stranger who was holding her tender little babe under the pump. He spoke on this outrage to the extent of four columns, in which he included a number of letters from men who think highly of his courses and approve the Muscle Shoals scheme. It is at least arguable that if every Senator took the time of the Senate whenever any editor wrote an editorial with which he did not agree little time would be left for the discussion of matters of

more permanent worth. When Mr. Norris concluded his keening the Senate resumed consideration of the bill for the protection of investors in securities. If the editors would let Mr. Norris alone it may be the Senate could get along a little faster. Or if the Senate would give him a weeping wall all for his own.

ON May 10th Mr. Cochran of Missouri printed an excerpt from the printed report of the Federal Trade Commission on its investigation of utilities. That report is, of course, on file everywhere and available to any one interested. On the same day Mr. Dill of Washington had two articles reprinted from *The Nation,* in which utilities were attacked to the total of three columns. On the following day Mr. Dill had another article reprinted, this time from *Public Ownership,* in which it was again argued that taxless towns do exist.

On May 12th Senator Thomas D. Schall of Minnesota secured three columns in the $4,000 a day *Record* for the remarks of J. Adam Bede of Minnesota, favoring the St. Lawrence waterway. Mr. Bede has not been a member of Congress for some years, but he knows how to make himself heard.

On May 16th Mr. Dill had another article, originally printed in *The Nation,* reprinted in the *Record.*[1] In this Mr. Louis Bartlett stated that "eighty-four cities in the United States levy no taxes, perform all the functions of ordinary cities, and keep out of debt. It sounds too good to be true. . . ." In fact, it is too good to be true. Some one must pay the policeman and the residents in a town are the only ones who have this privilege and it is optional with them whether they call the process of digging into their pockets the levying of a tax or the imposing of a rate. The source and destination of the dollars remain the same. In my interest in Mr. Bartlett's two-and-one-half columns in the *Congressional Record* I almost overlooked the fact that Howard Y. Williams delivered a speech before the Central Labor Union of Marion, Ohio, which was reprinted in the *Record* on May 16th through the helpful courtesy of Representative Ernest Lundeen of Minnesota.

The Progressives must feel sometimes like what's-his-name who peculated and bandited in India some scores of years ago. "I am amazed," said he, "at my own moderation." There is no real reason why all the speeches of all the hearty orators who have endowed the Progressive cause with their talents should not be printed if Mr. Williams' speech at Marion is not to be objected to. He promised on behalf of the Farmer-Labor Party and the League for Independent Po-

[1] "A new justification for the boast of the Public Ownership League of America that it has a powerful ally in the *Congressional Record* in disseminating public ownership propaganda appears in the *Congressional Record* for May 16th. An article by Louis Bartlett of California, in *The Nation* for May 17th, under the title 'Tax Free Cities—Public Profits from Municipal Power' appears in full in the *Congressional Record* for May 16th, having been offered for publication by Senator Dill of Washington. The fact that it appeared in the *Congressional Record* in advance of date of its original publication in *The Nation* indicates the smoothly working relationship between the public ownership propagandists and certain members of the United States Senate."—*Judicial Bulletin No. 598; July 5, 1933; published by Oklahoma Utilities Association.*

¶ "DURING *a single month of May (to cite an illustration) there were ten attacks on the utilities and arguments in favor of public ownership reprinted in the* RECORD. *An advantage of this system is that these reprints may again be reprinted, in which case credit is often given to the* CONGRESSIONAL RECORD. *Small town editors and peach-crate orators have been known in good faith to say that 'we find in the* CONGRESSIONAL RECORD.' *This gives the reprints a semblance of authority.*"

litical Action, with H. Q. on East Nineteenth street in New York—which would seem to be a good place for it—about all the changes in our national Constitution and plan of government that can be asked by the hungriest reformer. There is really no excuse for the other patent medicine doctors not getting into the *Record* while the getting is so demonstrably good. If I were a betting man (which I am not except when I know I have a sure thing), I would bet that there is no cause so cockeyed and whopper-jawed that some Senator or Representative cannot be found to run a little ad in the *Congressional Record,* right next to millions of words of the purest reading matter conceivable. Thirty millions of them in this special session, to be precise. And if the Senators and Representatives had just said "yes" thirteen times, all the proprieties would have been observed and as much good done.

ON May 17th Mr. Goss had a quantity of material relating to Muscle Shoals reprinted.

On May 27th Everett M. Dirksen of Illinois had reprinted in the *Record* a joint resolution of the Illinois legislature about Muscle Shoals. Pure propaganda, of course, for the resolution is already on file where it should be on file, and where searchers could find it if they wanted it.

On the same day—May 27th—the indefatigable Mr. Dill of Washington contributed another clipping from *The Nation,* in which the Supreme Court was thrown for a loss and penalties assessed against it. The court had made the grave mistake of giving a decision in favor of the utilities, and *The Nation* led the utilities to the foot of the old elm, ropes around their necks. No Senator offered any objection, nor did any Senator try to get into the *Record* anything on the other side of the case, or in support of the Supreme Court, or illuminating the details of the long and dusty battle Mr. Dill has carried on against the court. The other Senators were presumably tired.

One thing seems certain; the utilities had not bought these Senators. Or if the utilities had bought them it was a poor investment.

THERE is no more brilliant opponent of privately owned utilities than Morris Llewellyn Cooke of Philadelphia. Even those who most mislike his theories read what he has to say for the delight they find in the way he says it. He is reputed to be,

and for my part I believe it, the fountain at which most of the Progressives of today drink in inspiration. At the request of Mr. Costigan two of Mr. Cooke's articles were printed in the *Record* on May 29th. One had been printed in *The Electrical World* and the other had been printed in *The New Republic*.

Again the fact may be emphasized that the only possible reason for this reprint lies in the propaganda value of the articles.

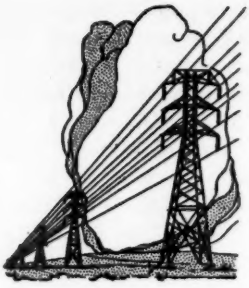
In the same issue Mr. Shipstead of Minnesota held his annual maneuvers. The Interstate Commerce Commission some time ago reported that the effort to evaluate railroad property was not doing so well, but it published some pages of statistics on the assumed valuations for all that. Any one interested can find them on file at all the libraries in this report; no one who has the slightest interest has been deprived of them. They have been commented on editorially and the salient facts carried in the newspaper wire services. But Mr. Shipstead must have thought that some one would read them again, and, having read, find a white light invading his darkened soul, for he had the statistics reprinted. With them went a chart consisting of long and short black lines, which illustrated whatever was the point that Mr. Shipstead was making. If he should want to reprint them tomorrow in the *Record* no one would object. If he gets mad he may do it, too!

Nothing can be done about it, of course. This article is one of the finest examples of sheer futility of which I know. No Congress will ever employ a competent editor to shuck out of the *Record* the things that do not belong there. No editor could withstand the constant crying of four hundred-odd Congressmen on his doorstep, if one were employed. And if the impossible were to happen and an editor were employed he would have no more authority than a proof reader. Congress once had an aberration and permitted itself to be coaxed into passing a law that made a Comptroller General of the United States immune to all authority, influence, and anger for the space of fifteen years and Congress will never do that again.

It is not likely that all the plainly labelled propaganda which was printed in the May issues of the *Record* has been detected. It may be, too, that somewhere in that voluminous production are a few printed words which might indicate that the thirty Senators who are charged with representing a more conservative school of thought have been prodded into resentful reply. But I have seen no instances of retort.

Inflation; What It May Bring to the Utilities and to Their Security Owners

In the next number of PUBLIC UTILITIES FORTNIGHTLY*—out September 28th—will appear a searching analysis not only of the form of inflation that is likely ahead of us, but also the effect which it is likely to have upon utility common stocks, preferred stocks, and bonds.*
By SAMUEL CROWTHER.



The $500 House Telephone

Some "values of utility service" as computed by the ratepayers themselves in court actions

Current proposals to establish as a utility rate base the estimated worth of the utility services to the ratepayer—(presumably arbitrary figures to be established by the regulatory commissions)—has led to an investigation of the sums claimed as damages by customers when their power, telephone, and other services were discontinued, as evidence of the value which they placed upon these modern conveniences. Some of the findings are recorded in the following article.

By HENRY C. SPURR

Our political leaders with popular acclaim seem to think that it would be a good thing for the country to have everything except public utility service go up in price. The rates for utility service they say should come down. Whatever public utility charges happen to be, either in good or bad times, they are always too high in the opinion of candidates for political office. Various expedients for forcing utility rates down have, therefore, been suggested. One is the threat of government ownership.

Another threat is that the prudent investment rate base be enforced during a period of high values and the reproduction cost base during a period of low values. The purpose of this would be to allow the utilities the lowest possible earning capacity at all times. But whatever may be said of the fairness of this proposal, its illegality is manifest.

A third proposal is a limited use of the value of the service theory of rate making.

Value of the service means its value to utility customers as distinguished from the cost of the service. Rates in normal times would not be based on the value of the service but on its cost no matter how valuable the service might be. But, during periods of depression, it is suggested that rates less than the reasonable cost of the service may be allowed on the supposition that the value of the service is then less than its cost. If, for example, it costs a telephone company $2 a month to serve a certain class of customers, and it can be shown because of de-

pressed economic conditions that the value of the service to those customers is only $1.50 a month, it is urged that a rate of $1.50 a month can be fixed by commissions, whether that rate pays the company or not. The value of the service theory applied to reduced rates is of no practical value unless it will enable the commissions to fix rates at less than the reasonable cost of the service. The utility companies could, of course, be compelled to serve at these noncompensatory rates only until their assets were exhausted. Whether this is sound legal or regulatory doctrine need not be considered. It is mentioned merely to direct serious attention to the question of the value of the service utility companies are rendering—a matter which has long been overlooked by our political leaders, by many utility customers, and apparently even by the managers of utility companies themselves.

THE value of the service to utility customers is something which no commission can decide except in a purely arbitrary manner. It is an individual customer matter. No one but the customer can tell what the value of the service to himself is, and his judgment about it may be good or bad, sound or unsound. The fact that customers discontinue the service because they are no longer able to pay for it does not mean that its real value is any less. The value of utility service does not depend upon the varying ability of customers to pay for it any more than the value of a loaf of bread depends upon such a contingency. No method yet suggested for arbitrarily determining the value of the service to various groups of utility customers will bear inspection.

The fact is that utility companies put much more money into the pockets of the people than they take out. They always have. They always will as long as the business continues to prosper. The value of the service is much more than is ever charged for it.

Few utility customers ever stop to think of the value they are getting for their money. It is only when the well runs dry that the water is missed. When the customer of a utility company is involuntarily deprived of the service, he begins to appreciate what it is worth to him.

A CASE involving the value of electric service to domestic consumers arose in Texas in 1931. The company was serving its customer both at his residence and his shop, but by different lines. A dispute arose as to the amount of the shop bill, which the customer claimed was excessive, and which he refused to pay. He offered to pay the bill for service at his house, but the company insisted that both accounts be settled for, and therefore discontinued the service at the customer's residence. This service was cut off for two days and one night. The customer then brought an action for $1,000 damages, but was finally awarded $200 actual damages. In addition to the actual damages he was awarded $500 exemplary damages.

The bill for service at the shop had run from $30 to $50 a month, and the customer claimed that it should have been no more than from $7 to $11 a month. What the bill for domestic service was does not appear, but, if it were an average bill, it would not run to exceed $3 a month or 10 cents

a day. If the bill for this service had been higher than that, the customer would probably have claimed that he was being overcharged.

Here we have an actual case in which the value of the service to this customer was found to be $100 a day. Assuming that this was a just award, we find that for an expenditure of probably not to exceed 10 cents a day the customer was receiving in actual value $100 a day. This customer probably never appreciated what he was getting for his money until the service was cut off.[1]

SOME time ago an action was brought against the Alabama Power Company for damages for wrongful discontinuance of service at a customer's residence. The service was cut off for fifteen days. A jury rendered a verdict for $916.66, but the supreme court of the state reduced this to $500. It appeared in this case that the customer had to use kerosene lamps during the time he failed to get electric service, and the expense and inconvenience of this old method of illumination coupled with the humiliation and embarrassment he suffered because of that fact were the basis of his claim for compensation. So it seems that in this instance the value of the service to the customer was not quite as much as it was in the Texas case. Still it was found to be over $33 a day, and, assuming that he was getting this service at the average rate of not to exceed 10 cents a day, he certainly had ample ground for complaint when the service was wrongfully discontinued. He probably claimed that the service was worth much more than $33 a day to him, but even at the lower rate allowed by the supreme court he was making a handsome profit on electric service every day it was delivered to him.[2]

A CASE involving the value of water service to a domestic consumer arose in the same state. The service was cut off from a customer's residence for eight days, and an action for compensatory damages was promptly brought. During the eight days the service was disconnected it appeared that the customer had to get water from a well a block and a half from his house. He had to carry this water in buckets twice a day. The supreme court to which the case was finally carried thought it proper for the customer to show how many buckets of water he had to carry and the number of trips he was required to make. The amount of his damages, of course, would be the measure of the value of the company's water

[1] Southwestern Gas & E. Co. *v.* Stanley (1931) (Tex. Civ. App.) 45 S. W. (2d) 671.

[2] Alabama Power Co. *v.* Jones (1930) 221 Ala. 573, 130 So. 224.

¶ "THE *value of the service theory applied to reduced rates is of no practical value unless it will enable the commissions to fix rates at less than the reasonable cost of the service. The utility companies could, of course, be compelled to serve at these noncompensatory rates only until their assets were exhausted.*"

service to him. A jury awarded him a verdict of $350, but the supreme court reduced this by $150 so that the customer's compensatory damages were fixed at $200 for the eight days he was deprived of the company's water. Thus the value of the water service was fixed at $25 a day.

What the rates charged for this service which was so valuable to the customer were does not appear, but if they were more than a fraction of a dollar they would probably be regarded as excessive if not extortionate. Here it appeared that the value of the water service to the customer was very much more than the amount probably charged for it.[3]

In another water case it appeared that the service was cut off for fifty-five days against the protest of the customer. The consumer in this case was compelled to go three or four blocks for water, and on rainy days some three miles. He sued the company for damages, the jury awarding him $1,750, but the supreme court reduced this to $750. It does not appear what the water rates were, but the value of the service in this case amounted to a little over $13 a day, showing quite convincingly that the value of the service is an individual matter depending upon the circumstances of each case.[4]

In a Kentucky case it appeared that electric service was cut off at a customer's place of business because of a dispute over his bill. During a certain period there was a leakage of current. The bills were running too high. It was admitted that the monthly bill should have been about $12.50. The current was cut off for a period of probably less than two months. The jury awarded $500, and the verdict was sustained by the court of appeals. Assuming that the current was cut off for that length of time, the value of the service in this case amounted to $8 a day, while it was admitted that a charge of less than 50 cents a day was all that should have been made for it. This is not quite as high profit to the customer as appeared in some of the other cases. Still it was substantial and showed the value that the customer really placed upon the service.[5]

It might be stated at this point that an effort has been made to discover the compensatory damages awarded as distinguished from exemplary damages which customers have been held entitled to when their service has been wrongfully discontinued, but the fact that exemplary damages of considerable amounts may be allowed in some cases is a further indication of the high value placed upon public utility service. If it were not regarded as exceedingly valuable, there would be little reason for imposing exemplary damages for its discontinuance.

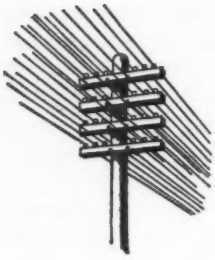
The fact that the value of the service may be more to one customer than to another is well illustrated in a case which arose in Louisiana. It appeared that electric service was cut off from plaintiff's residence for two days and two nights. The

[3] Alabama Water Co. *v.* Barnes (1919) 203 Ala. 101, 82 So. 115.

[4] Alabama Water Service Co. *v.* Harris (1930) 221 Ala. 516, 129 So. 5.

[5] Kentucky Utilities Co. *v.* Warren Ellison Café (1929) 231 Ky. 558, 21 S. W. (2d) 976.

What One Subscriber Believed Her Telephone to Be Worth



"THE owner of the boarding house claimed, and the jury found, that the removal of the telephone for a year resulted at a damage or loss of $500 to the telephone subscriber. This, then, both in the judgment of the telephone subscriber and of the jury, was the measure of the value of that particular telephone for a year, or a little over a $1.30 a day. In this case these damages do not appear to have been exaggerated. The service was probably actually worth to that subscriber the full amount allowed."

court did not allow the full amount of damages claimed, but the customer was awarded the sum of $500. In this case the value of the service was found to be $250 for each day and night or period of twenty-four hours. But it was a peculiar case. The plaintiff was a sick man, and, according to his testimony, the electric service was of very great value to him. The court said:

> "In our inquiry to ascertain the nature and amount of these damages, we do not find that plaintiff has established his claim that his rheumatic or synovitic condition was, by the mere deprivation of treatment by electric heat for a period of forty-eight hours, converted into an incurable case of nephritis and arthritis of the sacro-iliac joint and of the joints of the spine. We do find, however, that plaintiff and his family were deprived of all electric service for forty-eight hours, during which time they suffered much discomfort and inconvenience. They were compelled to use ordinary candles for lighting purposes, and because of the lack of a proper lighting system were obliged to retire much earlier than was their usual custom. They were forced to abandon a social entertainment which they had arranged for a few of their friends for Thanksgiving night, with the necessary and humiliating explanation to invited guests. Plaintiff, himself, has been a sufferer from rheumatism or synovitis for a number of years, and, undoubtedly his condition was aggravated by the excitement and nervous tension superinduced by the removal of the meter and the absence of all electric service."

The court thought that under the circumstances $500 was a reasonable allowance for the loss of the service for two days.[6]

Not everybody, of course, is a sufferer from rheumatism or synovitis, but how is any commission going to tell whether they may not be suffering from that or something else unless the commissions call the customers in and endeavor to fix the value of the service on a scientific basis.

It would probably be admitted by everybody that our domestic electric service is much more valuable to customers during the winter holidays than at ordinary times, but the fact that a family by discontinuance of the service is compelled to retire earlier than usual might by some be regarded a fact in mitigation of damages rather

[6] Finnin *v.* New Orleans Pub. Service, (1928) 167 La. 122, 118 So. 860.

than in aggravation of damages. It is apparent, however, that the value of the service to customers varies greatly in individual cases.

FEW telephone subscribers probably realize the real value of the service until they are voluntarily deprived of it. Recently the owner of a rooming house sued a telephone company for $500 damages for the removal of her telephone. She was without service for a year. A lodger had put in a long-distance call and had not paid for it. The owner of the house in whose name the telephone was refused to pay, and the telephone, under the rules of the company approved by the commission, was removed. The jury returned a verdict of $500. The rooming-house owner's claim for damages was based on loss of service and special damage for disrupting and destroying her rooming-house business because of loss of the telephone service.

The court reversed the decision on the ground that a right of action did not exist, but that is not in the point.

The fact is that the owner of the boarding house claimed, and the jury found that the removal of the telephone for a year resulted at a damage or loss of $500 to the telephone subscriber. This, then, both in the judgment of the telephone subscriber and of the jury, was the measure of the value of that particular telephone for a year, or a little over a $1.30 a day.

In this case these damages do not appear to have been exaggerated. The service was probably actually worth to that subscriber the full amount allowed.

Assume that the rate for that telephone had been $5 a month or $60 a year. It would probably have been regarded as too high, and might have been too high measured by the cost as distinguished from the value of the service. But, if the subscriber was telling the truth, and if the judgment of the twelve men on the jury was sound, and if it is assumed that the company was charging as much as $60 a year for this service, what happened was that the company was taking $60 from the subscriber and giving her $500 in value of the service. In other words, it was taking $60 out of the subscriber's pocket and putting $440 back.[7]

A FEW years ago a small telephone company got a bill from a rural subscriber for $66. Accompanying the bill was a letter in which the subscriber said:

> "My phone was out of order for a few days. I had to hitch up and make a number of trips to town to bill some cars of fruit. I figure that the loss of time and the cost of making these trips amounted to $66. You ought to have kept the line open. My loss was due to your negligence, so, if you do not pay this bill at once, I shall put it into the hands of my attorney for suit."

The subscriber was a fruit grower in a rural community, and he was here putting an estimate on the value of the service he received from the telephone company. What he was in substance saying was that he would have been $66 better off if his service had not been out of order for a few days. Considered as a value of the service proposition, how much could this subscriber have afforded to pay rather than suffer that loss?

It so happens that this subscriber

[7] Cincinnati & S. Bell Teleph. Co. *v.* Rhoades (1933) (Ohio Ct. App.) 186 N. E. 457.

paid $1.75 a month, or $21 a year for his service. In the few days his line was out of order he says he lost $66, although the charge for a month's service was $1.75. This $1.75 charge was based on the cost and not on the value of the service. This particular subscriber apparently without appreciating the fact was profiting greatly by telephone service every day it was rendered to him.

In a South Carolina case a subscriber applied for a telephone on December 31, 1930. The telephone was not installed until January 6th following, a loss of service for five days. For this delay the subscriber asked $1,000 damages. He did not recover because the court held that the delay was not unreasonable. Nevertheless, it was quite evident that the subscriber, whether his judgment was good or bad, placed a very high value on this kind of service.[8]

Now it is true undoubtedly that some of these estimates of the value of the service by customers who were deprived of it were exaggerated. A customer's judgment as to the value of the service may depend somewhat upon whether the company is trying to get money from the customer or the customer is attempting to get money from the company. Nevertheless, allowing for that, it is apparent upon serious reflection that the value of utility service is in most cases very much more than the amount charged for it. That utility rates based on the value of the service as distinguished from the cost of the service have ever been exorbitant is a manifest absurdity. No business can prosper greatly under the operation of economic laws unless the value of its goods or services are at least equal to what is charged for them.

Take the electrical industry as an illustration. Electrical service had to be sold in competition with gas and steam, but in spite of that the electric industry made a place for itself. It has grown to enormous proportions. It could not have done so if its customers had not had value received for their money. Much of the wealth of the country has been due to the profits the customers of the electrical industry have made from electric service; that is to say, the margin of the value of the service over what has been charged for it.

Telephone service, the source of many rate complaints, is probably one of the most remunerative services to the public that we have. Telephone companies are putting money into the pockets of their customers or subscribers every day, provided time is of any

[8] Brunson *v.* South Carolina Continental Teleph. Co. 162 S. C. 41, P.U.R.1931E, 428, 159 S. E. 913.

¶ "The *value of utility service does not depend upon the varying ability of customers to pay for it any more than the value of a loaf of bread depends upon such a contingency. No method yet suggested for arbitrarily determining the value of the service to various groups of utility customers will bear inspection.*"

value to them. The same is true of all utility service. If the service were not worth what is charged for it, the utility would soon cease to exist. Economic law would take care of that.

Under our regulatory policy rates in normal times have been based on the reasonable cost of the service and not on the value of the service. Little attention has, therefore, been given to the value utility customers are receiving for their money. If serious consideration were given to that question, there would be less chance of success of political attacks on the industry and much less talk about the exploitation of the public. If an industry puts $2 in the pockets of the people for every dollar it takes out, it ought to be looked upon as a friend and not as an enemy of the public.

Both the customers and stockholders of a successful industry profit by its existence. The customers of public utility companies profit more from utility service than the stockholders of the company. In view of that fact, is it not a penny wise and pound foolish policy to exact the last pound of flesh from the stockholders? If it should turn out that commissions may by arbitrary and speculative methods fix a value of utility service at less than its reasonable cost, and force the companies to continue business on that basis even for a temporary period, the probability is that the customers would be the greatest losers.

If You Believe the Newspapers—

THERE are about 150,000 railroad stations in the United States.

* *

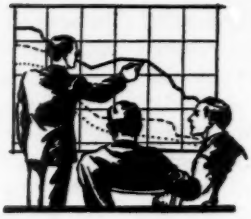
BENJAMIN RILEY is credited with being the first taxicab operator in New York; he operated a French car in 1904.

* *

AN experimental "noiseless car," from which 99 per cent of subway noises are claimed to be excluded, thus permitting passengers to converse in normal tones, is in operation in New York's underground.

* *

THAT famous "power trust" jibe of the Hearst papers against F. E. Bonner, one time secretary of the Federal Power Commission, has cost publisher William Randolph $95,000 to date and twelve other suits are still pending.



THE EFFECT UPON COMPANY EARNINGS OF

The New 3 Per Cent Tax on Power

How much the Federal revenue law, which has just become operative on September 1st and which proposes to collect $33,000,000 a year from the stockholders of electric utility companies, will cost the individual investor.

By OWEN ELY

ONE popular myth which has been exploded by the depression was the widely held opinion that the government is a detached all-powerful institution with inexhaustible means of supporting itself and of remedying all economic wrongs or mishaps.

The public has been awakened to the realization that our national economy consists not merely of three independent entities, the individual, the corporation, and the government, but rather of a great conglomerate of interrelated and interworking interests which has, somehow, been made to function as an economic machine. Once these various interests became over-dominated by selfish motives and were not held in check by other interests, the machine's efficiency suffered and finally almost stopped functioning. But one lesson probably not yet fully learned is that the public alone either directly or indirectly must pay the cost of government, and that over-taxation of any one class of individuals or corporations will conflict with the interests of the "average man" by upsetting our national economy.

So far as the public utilities are concerned, the fallacy apparently still persists that the public has a legitimate claim on any part of their profits it may wish to take in the form of taxes, while at the same time reduced rates are demanded, new financing made difficult, and cheerful sacrifices to the NRA "new deal" expected.

As a very large proportion of utility revenues must be used to pay charges on heavy fixed capital, reduc-

tion of earnings below a point at which such capital investments are adequately protected will adversely affect utility bonds, the backbone of bank and insurance company investments, and thus the public by overtaxation of utilities would conflict with its own interests as investors and as holders of bank deposits and insurance. The government's starvation policy in regard to railroad earnings in the past two decades has had a very serious effect on those institutions during the depression; had utilities been similarly affected, the situation would have been extremely disastrous. It is, therefore, of interest to both investor and consumer to ascertain the probable effect of the heavy new taxes on utility company earnings, and its direct bearing on proposed rate reductions.

THE recently enacted 3 per cent tax applies to all electric energy sold to residential and commercial customers, superseding the similar tax enacted in 1932 which was payable by consumers rather than by the companies themselves.

Total revenues derived last year from electric power production were divided about as follows:

			Per cent
Domestic use	$669	millions	37
Commercial use	529	"	29
Total taxable sales ..	$1198	"	66
Industrial use	$520	"	28
Miscellaneous use	114	"	6
Total non-taxable ...	$634	"	34

The 3 per cent Federal tax on domestic and commercial use would therefore amount to about $36,000,000 a year, based on the 1932 figures for sale of current.

As the new tax was not effective until September 1st, it affects only the last one third of 1933 operations. According to estimates in *The Wall Street Journal* the effect on earnings of some of the larger systems would be as shown on page 330.

It is obvious that on the basis of 1932 earnings the tax seriously affects the small margin of earnings available for equity interests in companies which have a highly pyramided capital structure, in some cases completely eliminating any net profit and thus endangering fixed charges. Companies such as United Gas Improvement, North American, and Consolidated Gas, which have a relatively smaller proportion of fixed capital, however, could absorb the tax with a comparatively small reduction in net earnings.

The effect of the tax on individual utility stocks is also dependent on the proportion of electrical energy sold by each company for residential and commercial use as compared with industrial use. Exact statistics on this are lacking (except for a few systems) although national totals are compiled. Considering the recent increase in national output of electric current, which for the week ended August 12th was 15 per cent over last year, the new tax will naturally not have as serious an effect as would have been the case in a continuation of depression conditions. A 15 per cent gain in output does not, however, necessarily mean a corresponding gain in gross earnings, because thus far the gains have come from industrial consumers who pay a much smaller kilowatt-hour rate than do residential and commercial consumers. During the first two years of the depression the

How the New 3 Per Cent Federal Tax on Power Affects the Per Share Earnings of the Electric Companies

System:	PER SHARE EFFECT OF TAX *Annual basis*	*Last third of 1933*	*1932 per share earnings*
American Gas & Electric	.17	.055	$2.31
American Power & Light	.33	.11	...
American Water Works & Electric	.17	.055	1.44
Columbia Gas & Electric	.03	.01	.96
Commonwealth & Southern	.05	.02	.12
Consolidated Gas of New York	.31	.10	4.07
Consolidated Gas of Baltimore	.23	.072	4.29
Detroit Edison	.55	.18	5.21
Electric Power & Light	.18	.06	...
Engineers Public Service	.28	.09	.98
National Power & Light	.16	.05	1.25
Niagara Hudson	.07	.02	1.07
North American	.169	.055	2.01
Northern States Power	1.07	.36	4.97
Pacific Gas & Electric	.30	.10	2.09
Public Service of New Jersey	.20	.07	3.35
Southern California Edison	.50	.17	2.06
Standard Gas & Electric	.40	.13	.59
United Light & Power	.18	.06	.16
United Gas Improvement	.05	.02	1.35

utility companies were able to withstand the worst effects of the depression because demand from residential and commercial users continued the increase which had prevailed without interruption for many years; but last fall this record was broken, and for some months they were affected by declines in all classes of current use. It will be important, therefore, to watch the trend of commercial use as revealed in the monthly statistics of the Edison Electric Institute. Figures for June indicate that, while "wholesale commercial" and other use of current gained 18 per cent over last year, sales to other consumers increased less than 2 per cent. It is possible that transfer of the tax to the companies after September 1st

may have some slight effect in stimulating the use of current for household consumption, but the main stimulus must come from gradual recovery in our standards of living, as gains in industrial activity and the NRA campaign to spread employment and increase wage payments are translated into larger household use. In this connection the recent sharp gain in the sale of electric refrigerators is a hopeful indication, for this means a large percentage increase in current where used.

SOME thirty years ago the electric light and power industries' total tax bill was only $2,700,000, or about 3.4 per cent of total revenues. By 1932 it had grown to some $217,000,000, or 11.8 per cent of gross (compared with 10.6 in 1931). For 1933 there will be an additional Federal tax in the neighborhood of about $11,000,000 (3 per cent tax on domestic and commercial sales in the last four months); the new Federal excess profits and capital stock taxes are, in effect, retroactive, applying to the entire year 1933; some companies may also assume the new 5 per cent dividend tax, payable by certain stockholders and deductible at the source; and new state taxes will swell the total.

With pending proposals for additional state and local taxation the outlook for 1934 is even gloomier, particularly considering the probable increased burden of expense on the utility industry involved in the NRA code; increased wages alone have been estimated at over $20,000,000.

REGARDING the effects of the blanket code, an editorial in the New York *Journal of Commerce* of August 3rd reads as follows:

> "Public utilities are so hedged about by restrictions and regulations that they are disinclined to permit themselves to be burdened with added expense incident to compliance with the provisions of the President's blanket code for maximum hours of labor and minimum wages, it is learned here. Officials who have been visiting Washington have contended that the public utilities must give continuous service under the terms of their charters and, therefore, the problem of finding a work week applicable to their operations without creating hardship is especially difficult.
>
> "Payrolls, it is added, are the most important expenses borne by the utilities in operating their plants and, therefore, any important change in the number of employees probably could not be met at present rates permitted to be charged for utility service. They are not altogether unwilling to adopt individual codes, but are apparently opposed to any blanket pact."

An analysis of six principal utility companies (in the New York *Times* of June 4th) showed that while operating and maintenance expenses declined from 48.93 per cent of gross revenues for 1928 to 44.35 per cent for 1932, taxes borne directly by these companies rose from 10.27 per cent in 1928 to 13.11 per cent in 1932. The amount of taxes paid in 1932 was about 30 per cent greater than in 1928 although both gross revenues and net before charges showed only a slight gain.

The railroad industry has been wont to complain bitterly about the effects of heavy taxation on its earnings. Yet in 1929 total taxes were only 6.3 per cent of gross and in 1932 when revenues were halved the percentage was still only about 8.8 per cent compared with 11.8 per cent for the utilities *before application of the new Federal and state utility taxes already in effect,* and other costs under discussion. It seems evident, therefore, that the utility industry has

¶ "THE *fallacy apparently still persists that the public has a legitimate claim on any part of the profits of the public utilities it may wish to take in the form of taxes, while at the same time reduced rates are demanded, new financing made difficult, and cheerful sacrifices to the NRA 'new deal' expected.*"

proved vulnerable in much the same way as gasoline, because Federal and state governments, hard-pressed for new sources of income, have found it an easy place to collect. Temporarily the industry has been "in bad," making the public complacent over this means of raising revenue. It is, however, obviously unfair to make security holders of the utility industry the target simultaneously for a further increase in the already heavy tax burden, and for rate reductions of drastic character, despite the large burden of increased cost under the NRA.

IT is generally admitted that the railroads have been almost "bled to death" by rate cutting—partly competitive and partly regulatory—and by heavy taxation. Must the utilities in future pass through a starvation cycle because of the recent financial misdeeds of a small part of the industry —just as the railroads suffered for the scandals of 1870–1907?

The country as a whole should be educated to the dangers of such a "persecution complex" before it is too late.

THE depression difficulties of certain holding companies such as the Insull System and the attendant revelations have been overexploited by scandal writers and doubtless account largely for the changed public attitude toward the utilities. But in fairness to the utilities it must be recognized that the mischievous practices of a few companies were not typical of the industry as a whole. Such holding companies were largely promotions designed to skim the cream from the operating companies through the juggling of books, while the legitimate holding companies have always been created to aid local operating companies in obtaining necessary capital through the most efficient channels, and to render technical service in engineering, accounting, and management. They have enabled the operating companies to tie together the load factors of many scattered localities—thus reducing the risk of local drought, varying time-loads, and other excessive costs through the use of interconnection and "superpower." The courts have recognized these legitimate functions of the holding-supervisory company and will doubtless continue to do so.

The argument that electric rates have not decreased since 1929 in proportion to the cost of living is perhaps true; nevertheless there has been a decrease which, combined with smaller volume and unchanged capital costs, has resulted in a sharp decline in utility earnings. Since 1913, there has been a constantly declining trend in average kilowatt-hour rates with exceptions only in 1918, 1922, and 1925; gains in 1922 and 1925 were so

slight as to be insignificant. As compared with 100 per cent in 1913, the cost of living index of the Bureau of Labor Statistics at the end of 1932 was about 133 per cent, while the index of domestic electric rates was about 68 per cent. In other words, compared with pre-war values electricity for domestic use now costs only about half as much as other items in the family budget.

To some extent increased taxes, plus the administration moves for raising commodity prices and wages, should serve as a "backfire" against some of the proposed rate cuts; and the attitude of the courts is, on the whole, probably still favorable. Nevertheless, once a movement gains momentum it is difficult to check; hence strenuous efforts are needed to help the industry maintain the healthy, progressive condition which has permitted it to make such wonderful technical advances in the past two decades. Any blow to the utilities will injure the entire economic system.

In a later article the writer will summarize some of the recent activities of state commissions, legislative bodies, and the courts with reference to rates and taxes, and discuss whether or not the courts are likely to continue safeguarding the utilities from the worst effects of the present campaign of rate cutting and tax raising.

In coming issues of this magazine—

Public Utility Financing under the New Deal

How the new Securities Act of 1933 will affect the methods of marketing stocks and bonds of public service corporations

By GIRARD B. RUDDICK

The Pending Conflict between State and Federal Regulation

The struggle to control the electric power utilities

By AARON HARDY ULM

Figures *versus* Fancies Concerning the Costs of Distributing Power

By HUDSON W. REED

Facts and Fallacies about "Straight-line" Depreciation Methods

Some of the common mistakes made by those who maintain that the depreciation that is to be deducted is based on age and estimated "life" of utility property

By DR. HENRY EARLE RIGGS

What Others Think

The Public Utilities NRA Codes as a Wedge for Federal Regulation

WHEN it was suggested in these pages some weeks ago that the Blue Eagle of the NRA might have a vital effect upon the utilities and the present system of regulation, one subscriber wrote in to take issue. It was about the time that General Johnson and his aides were arguing with the textile operators as to whether the minimum wage in the South ought to be $11 or $13 a week. A passage of the correspondent's letter is quoted here, not by any means to reflect upon the judgment of our correspondent (whose name for obvious reasons is not disclosed, but who is one of the most able utility executives now functioning), but merely to show the feeling that prevailed even so recently in the ranks of the utility operators:

> "I think your labored analysis of the possible effect the NRA codes may have upon the utilities is making a mountain out of the molehill. Now when I read of Washington discussing such minimum wages as $11 and $12 a week for the textile industry and a 45-hour week for other industries, I realize how little effect the NRA can possibly have on the utilities—at least the electric utility. I am sure that all private electric companies pay minimum wages far above this level and our working hours, except for a few standby emergency employees are probably easily within the 40-hour weekly maximum. Besides that, our business is not only predominantly intrastate (and so beyond the express jurisdiction of the National Industrial Recovery Act) but also regulated by local commissions exercising the sovereign police powers of the states which are constitutionally superior to any power which the Federal government may seek to intrude. Surely you concern yourself and your subscribers unnecessarily."

SUBSEQUENT events have definitely proven that the stress laid upon the "possible effects" of the NRA upon the utilities was not overstated. The letter quoted above indicates how unawares some members of the Edison Electric Institute may have been caught by the sudden summons to Washington by General Johnson to submit codes. We know now that the real purpose of the administration is to raise buying power among the masses all along the line, and not to set a perfunctory level for all industries. In other words, if a particularly poorly paying industry (such as textiles or lumber in the South) had been paying as low as $7 for adult labor it must be raised to $12.50 or thereabout. But where telephone operators were paying $12.50 already, they must now pay $15 and cut hours to provide more employment. One book publishing company paying routine translators $35 a week was informally told that it must increase such pay to $40, and so it goes. That the utilities have not escaped real effects of the act is shown by the following passage from the New York *Times:*

> "Practically, the increase in expense will be materially less, for most companies, than the 3 per cent tax on power sales to be borne by the companies on and after September 1st, but theoretically, this opinion is viewed as of the utmost importance by utility men."

And just why should it be regarded by the utility men, by this time aroused, as of the "utmost importance?" It appears that these utility men, staggering beneath the continuous rain of blows that have been administered to them by the administration since March 4th, such as increased Federal taxes (with exemption to their municipally operated rivals), Muscle Shoals, the wholesale

handing out of Federal funds for new publicly owned plants, and nation-wide rate agitation by the War Department, have developed the idea that they are the stepchildren of forgotten men of the New Deal. Small wonder, therefore, that *Barron's* sees in the utility codes a threat entirely different from that contained in code regulation for other industries. *Barron's* sees in the utility codes the thin edge of the wedge for increasing complete Federal regulation of utilities in all phases, to the gradual but ultimate exclusion of regulatory powers now exercised by the states. The editorial stated:

> "Federal control of public utilities looms as the ultimate objective of the government, the first step in this direction apparently being the NRA decision to bring all privately owned companies under the terms of the President's blanket code. State and municipally owned utilities, however, are completely exempt. An early clash with the Federal authorities occurred when two utility organizations resigned from the Edison Electric Institute due to their expressed inability to sign the code drawn by that organization because of possible conflict with the laws of their states as administered by their respective public service commissions.
>
> "An earlier ruling emanating from NRA headquarters at Washington indicating that state and municipally controlled utilities would not come under the blanket code was rescinded last week, with the explanation that it was 'possibly the mistake of a subordinate.' On July 28th, the day after the blanket agreement was promulgated by President Roosevelt, a telegram containing the first ruling was sent to the New Hampshire Public Service Commission. Declaring the latest opinion to be 'informal,' NRA officials expect to be provided with a regular legal decision within a short time.
>
> "In addition to the code submitted by the Edison Electric Institute, another code for the gas utilities was prepared and submitted by the American Gas Association. Both documents have been returned by NRA officials with the suggestion that they be modified so as to be more in line with the blanket code. A lively contest is contemplated between the various state commissions and the Federal organization despite the NRA decision. Already Wisconsin, Maryland, Connecticut, New Hampshire, and New York have indicated in one form or another that the industrial code might interfere with the state regulation of their utilities."

BASIS for the above fears is seen in the administration's ruling that the code requirements will not be applied to publicly owned utilities, thereby enabling the municipal plants to sneak out of the burdens of increased employment expense just as they have been permitted to escape all other burdens placed upon the utilities from taxation to commission regulation. The public sense of fair play, however, may compel municipally owned plants to comply with the Blue Eagle requirements even though they are not legally obliged to do so. A news item in the New York *Times* of August 15th stated:

> "Invitations to municipal electric plants to adhere to the presidential reëmployment agreement squarely raises the issue whether these and other types of municipal utilities are subject to codes or not. It is altogether likely that the Edison Electric Institute conferred with NRA officials before taking this step, which none of the other utility associations has attempted as yet, so far as has been ascertained. In view of the purposes of the agreement, it is not probable that the municipal or state-owned plants will avoid a share in the recovery program."

SOME small consolation may be gained by private utility operators from the chagrin of their severest critics who predicted that the "power trust" would never play ball with the President's recovery program. They were all prepared to cry "slacker" notwithstanding the fact that there are reasonable grounds for the utilities to contend they should not be subjected to the Blue Eagle demands. Typical of these predictions was the following statement by the Washington correspondent of *The New Republic*, known as "T. R. B.":

> "Despite skeptics, this is a real war here in Washington. As I write, the steel, coal, and public utilities industries still categorically refuse to agree to codes acceptable to the administration. The administration will not give in; neither will the steel, coal, and public utilities magnates. A sudden compromise is always conceivable, but at the present time it looks as if the war would be fought to a finish. . . .
>
> "The most interesting event of the last few days is the change of attitude of General Johnson towards the erstwhile 'respectables' of American business. In his

recent press conferences, the General has been extremely bitter towards the steel executives. There is reason to think that it has been pointed out to the General that the steel and coal companies and the utilities—the three industrial groups which have been most reluctant in submitting codes—are also the three most closely identified with the House of Morgan. Last March, at the height of the bank panic, Mr. Lamont and even Mr. Morgan, were almost fulsome in praise of the Roosevelt administration. But now it seems that, quite apart from the NRA, the House of Morgan deeply resents the Securities Act, and is immoderately angry at Mr. A. A. Berle's recurrent suggestion that the government ought to assume charge of all new investment business."

Well, T.R.B. was wrong—about the utilities at least—because they "got under the wire" with acceptable codes by voluntary action. Accepting T. R. B.'s line of argument, that ought to entitle the utilities to sit on the Right Hand and sing hymns of praise to the New Deal along with the textiles and other ninety and nine just. Even the two particular companies that expressly refused to sign the Edison Electric Institute code did so obviously as a matter of principle, showing their good faith by voluntarily conforming to its terms as to wages and labor hours. They do not object to the Blue Eagle's demands; they simply do not want him in their shop windows.

Evidence of this is contained in the press statement authorized by the Hartford Electric Light Company, one of the electric utilities that refused to sign the code and resigned from the E.E.I.:

"Without regard to the obvious question of conflicting state and Federal jurisdiction, this company is complying with the letter and spirit of the NRA requirements as to hours and wages.

"We feel it necessary to delay the signing of any broad and comprehensive agreement to submit to Federal regulation in all matters until the question of conflicting state and Federal jurisdiction has been straightened out.

"Under the laws of Connecticut, the state public utilities commission regulates the acts of the company—under any code, the acts are to be regulated under Federal authority.

"To date, the NRA has been too busy with other matters to give attention to this question, as the desired results as to hours and wages are being obtained without waiting, by the voluntary action of the companies."

ACCORDING to *The Wall Street Journal,* the Hartford Company has at least the tentative backing of its state commission. Chairman Richard T. Higgins, of that board, was quoted as saying:

"Practically all Connecticut utility companies are engaged in intrastate business. The amount of interstate business they have is very small. By signing the code the companies, engaged as they are in intrastate business, place themselves under Federal control, to a certain extent at least, in matters now regulated by the state.

"It is a much easier matter for the people of Connecticut to present their cases in relation to rates here rather than having to go to Washington."

Chairman Higgins was also reported to have said that the public utility companies of Connecticut have maintained their organizations intact during the past two or three years; men not required in their customary work were employed on other jobs. Under the code with a reduced schedule of working hours, companies will not only have to retain these men but will have to increase their number.

The chairman of the Maryland commission, Harold E. West, in a letter to Commissioner Bridges of New Hampshire, clearly states his own position toward the action of the Baltimore company which also refused to sign the code and resigned from the E. E. I. Chairman West writes:

"This commission brought no pressure whatever upon the Consolidated Gas Electric Light and Power Company of Baltimore or any other utility in the state to resign from the Edison Electric Institute or any other organization in order to avoid signing a code or codes of fair competition, nor have we requested utilities to refrain from signing codes on the ground that the signing of such codes would be an invasion of state's rights. A statement of what happened in connection with the Consolidated Company will explain our position. Mr. Herbert A. Wagner, president of the company, called on the commission on August 2nd, and told us that he was much concerned about the attitude his company should take about signing a code of fair

THE NEXT CAR WILL BE ALONG IN JUST A MINUTE

competition submitted by the Edison Electric Institute. He felt that utilities under state regulation did not come within the purview of the Industrial Recovery Act and that if he signed the code in its entirety there might arise some conflict between state and Federal authority in which his company might be involved. He was prepared, he said, to enter heartily into the President's plan for reducing hours of

labor, increasing the number of employees, and increasing pay. Certain paragraphs of the President's plan, however, he felt did not apply to the electric industry and he felt he could not accept them. He was writing General Hugh S. Johnson, Recovery Administrator, to this effect. To put into effect the paragraphs of the plan relating to wages and hours of labor, would, he said, cost the company $250,000 a year.

"Speaking for the commission, I told him I thought his acceptance of the President's plan, so far as he had accepted it, was fine; that our commission was heartily in favor of the drive to increase employment and wages, but he could not expect to recover the $250,000 of additional cost to his company out of rates. Moreover, he could not sign away the authority of the state of Maryland over his company, or the authority delegated by the state to this commission to regulate the rates and service of his company in every particular. Code or no code, we expected to exercise as close supervision over his company, its accounts, expenditures, service, and rates as we had ever exercised. I also told Mr. Wagner that our commission felt that it was our duty to protect the consumers of electricity, as far as it was within our power to do so, under the law, and that we did not see the justice of increasing the costs of electricity to the 200,000 customers of his company in Baltimore, in order to secure benefits for its comparatively few employees. Therefore, the company itself would have to absorb whatever costs might be incurred by compliance with the President's program.

"This position of our commission, I may say to you, is in conflict with that of the Recovery Administration, as outlined in an address made in Baltimore, by General Johnson. In that address he said:

> " 'Don't forget that nobody expects employers to pay the cost of reëmployment. That is not possible. The consumer—as always—pays the bill. . . . It is inevitable that the employer will raise his price and will himself pay nothing at all. The only restraint that is asked of him is that he not raise his prices any more than his costs are raised. Except in a limited class of cases, there is simply nothing to the claim that any employer pays this bill.'

"So far as our commission is concerned, there will be no raising of prices to the consumer of electricity or other public utility services by reason of compliance with the recovery program if we can help it. Public utilities in Maryland will be in that 'limited number of cases' which General Johnson refers to, in which the 'employer pays this bill.' . . .

"I may say in conclusion that this commission is heartily in accord with the President's recovery plan generally, especially where it applies to competitive and non-regulated businesses and industries, and we are glad to see utilities accept such parts of it as are applicable to their businesses, particularly those parts which provide for increased employment, increased pay, and fewer working hours. At the same time, our commission does not expect to relinquish any part of its control or authority over the utilities under its jurisdiction. We will continue a strict supervision over their rates and services, and unless compelled by law, or action by the courts, do not expect to pass on to the consumer any increased cost of doing business, resulting from compliance with the provisions of the recovery act. Such costs must be borne by the utilities themselves. . . .

"It is to be expected that in a plan so vast as that embodied in the Industrial Recovery Act; a plan which no one human mind can envisage in all its ramifications or comprehend in all its implications; there should be contradictions and conflicts, and many cases which it will not fit at all. That proper adjustments will be made where necessary, I am very confident. In cases such as those of the public utilities, where there may seem to be conflict between Federal and state authority, a reasonable and proper solution of the problems will be worked out. As for me, I cannot conceive of any desire on the part of the present National Administration to invade any of the rights of the states under any guise whatever, or to deprive the states of any of their proper and legitimate functions, and I do not believe such desire exists."

SIMILAR sentiment can be seen in a letter sent by Chairman Mayland H. Morse, of the New Hampshire commission, to General Johnson—in part as follows:

> "This commission is always concerned on behalf of the consumers when anything transpires which may increase the operating expenses of a public utility. . . . If New Hampshire utilities should add materially to their personnel and thereby raise the cost of doing business, the consumers in many instances will be required to pay higher rates. . . . As we see it there is not the same public need for . . . codes by utilities where both their service and rates are subject to strict regulation, as they are here, as there is in other types of industry. . . . The consumers of products of a utility look to us to protect them against unreasonable rates. Consideration of them makes us feel that utilities should be considered in a different class from those businesses where there is no control of the prices charged save what the traffic will bear."

Following the above statement, the public utilities of New Hampshire on August 21st were placed under definite instructions to "go slow" in signing any code under the National Recovery Act. Chairman Morse and Commissioner Bridges said that they were not opposed to the general purposes of the recovery program but believed that New Hampshire utilities should not be hasty in increasing their operating costs.

THE New York commission also, in a sense, joined the list of objectors when Chairman Milo R. Maltbie refused to permit the Staten Island Edison Company to introduce evidence to show the possible effect of the code on operating expenses. Chairman Maltbie stated:

> "No public utility in this jurisdiction has yet been able to show a statement from the National Recovery Administration asking it to sign a code. Until that is done I want no evidence of what the effect will be if a code is adopted. Such testimony will not be received as there is no proof that the Staten Island Edison Corp. has been requested by the National Recovery Administration to adopt and apply this code, and there is no proof that the Staten Island Edison Corp. has adopted a code and intends to apply it."

Shortly after making the above statement, the New York commission ordered the New York city electric utilities to cut rates by an annual amount of almost nine million. President Cortelyou of the Consolidated Gas Company protested that the commission's action was in the opposite direction from the President's program. Commenting on his position the *Wall Street Journal* stated:

> "Typical of the uncomfortable position of nearly all the public utilities is that of the electric power and gas companies of the New York metropolitan district. No sooner have they accepted a national code which will substantially increase their operating expenses than the public service commission cuts their rates. Mr. Cortelyou correctly says that the Washington administration asks the companies to proceed in one direction and the state commission points them in another. Chairman Maltbie's attempt to reply to this cleverly by asserting that Washington has never asked the companies to raise their rates is cheap bandying of phrases.
>
> "As Mr. Cortelyou suggests, the commission might more reasonably have withheld its order until the cost of applying an NRA code to the utilities could be accurately estimated. But, just as obviously, the New York city companies knew when they signed the code that this rate case was pending and was likely to result in lower rates. On both sides the argument on the merits of this rate order consists so far of loose generalities which express emotions but prove nothing."

A noteworthy announcement was made on August 25th in the *Boston Evening Transcript* that the state commissioners from all the New England states met in that city the preceeding day to discuss what attitude the state commissions should take toward the NRA codes. A brief statement was issued the following day:

> "The coöperation of the New England public utilities' regulatory bodies will be given the Federal government in its efforts toward industrial recovery. The commissioners feel, however, that they have no authority to advise or direct the utilities under their direction as to what attitude they should take."

It will be seen from these expressions by some very progressive state commissioners that the NRA demand for utility codes may be a real threat to state regulation. Doubtless the difficulty will be ironed out to the satisfaction of all, but it is a safe bet that there will be much heated discussion about the matter when the state commissioners assemble for their next annual convention on October 10th in Cincinnati.

Likewise it would appear that Federal regulation of other industries has "just started." Mr. Heywood Broun, writing in the Scripps-Howard press, admitted that the minimum wage levels so far secured by the NRA, such as $12.50 a week, are nothing for the Socialists to throw their cap in the air about. They fall far short of the socialistic ideal of that "irreducible minimum of human comfort which society should provide for all workers." But let us be patient, he tells us, the important point is to get any codes adopted at all by these big industries. Once the vise of Federal

dictatorship is clamped upon them, there will be plenty of time to talk about twisting down the screw to the proper level.

—F. X. W.

UTILITY "CODES." Editorial. New York *Times*. August 18, 1933.

A CONFUSED STATE OF AFFAIRS. Editorial. *Barron's*. August 15, 1933.

MUNICIPAL UTILITIES. Editorial. New York *Times*. August 15, 1933.

WASHINGTON NOTES. *The New Republic*. August 23, 1933.

NRA STIRS ISSUE OF UTILITY RULE. *The Wall Street Journal*. August 11, 1933.

TO LET UTILITIES PASS EXPENSE ON. *The Wall Street Journal*. August 17, 1933.

A New Approach to the Old Problem of Determining Values of Utility Plants

THE main task of "Public Utilities and the People" by William A. Prendergast is one of weighing the merit in the literature on several important utility problems.

After setting the available facts against the writings on the "power trust" Mr. Prendergast concludes that a power trust does not exist. He finds that there are good and bad holding companies and that there are important economic functions performed by holding companies. Only regulation by both Federal and state authority is needed here. His analysis and conclusion are adverse to those critics who say that regulation has broken down. It is a question of whether we believe a commission should be a prosecutor or a judicial body. After an enlightening discussion of valuation methods and the literature thereon he accepts the present value doctrine as the only method which is fair both to the public and the utility companies. Under the subject of rates he presents an excellent critique of the problem of allocating operating costs among classes of users of services, and comments upon a number of methods of devising rate schedules.

He is unable to find that publicly owned utilities give service at lower cost than those privately owned. After an analysis of the various aspects of public ownership he finds that this policy is not the answer to our public utility problems.

Perhaps the most instructive part of the book is the analysis of the valuation problem. Mr. Prendergast bases his chief objection to "investment" methods of valuation on the effects of a changing value of money. I have seen no effective answer to his objections. Simplicity and justice are strangers in the valuation problem.

As in all utility problems facing the public Mr. Prendergast takes a definite position in the valuation problem and proposes a specific method for establishing a present value. He proposes to ascertain book value of fixed capital as of a specific date, the data to be secured from the books of the company. He would divide the items installed up to June 30, 1917, from those installed thereafter and set apart all items of land and working capital. He would then apply an index figure to the first part to convert these book cost dollar figures into dollar figures as of the date of the fixation of the rate base, and add to this result the dollar figures of all property installed after June 30, 1917, at actual book cost. No reasons are given for selecting the date of June 30, 1917, as a point beyond which he would not inflate or deflate the dollar figures of cost. If there is to be an acceptance of the present value doctrine of valuation, I believe he should have defended the failure to apply an index number to plant items installed after

1917. Neither does he offer an explanation as to why organization costs and interest during construction have not also appreciated or depreciated in terms of money value the same as other items of property.

From the values calculated by applying index numbers to installations prior to 1917 plus book value of installations thereafter, he would deduct observed depreciation and add to the result the appraised value of land plus preliminary organization costs, working cash and supplies, and going value. In the case of cash and other working capital and going value, he proposes to determine the amount on the basis of the circumstances of the utility in each individual case at the time of valuation.

This is not a pure present value method and is subject to some of the criticisms which Mr Prendergast makes of historical valuations.

The difficulties of devising and providing a current index of utility construction costs are not inconsiderable. Statisticians have devised scores of methods of constructing index numbers of prices. There is wide difference in opinion as to the methods which are sound for different purposes. Some methods of constructing index numbers to compare prices between two given years are not sound in showing a comparison of prices over a series of years, and some methods do not meet established tests of accuracy and therefore show bias. It would be difficult to get the mathematicians to agree on a method for valuation purposes.

In addition to mathematical difficulties there are certain other practical problems involved. Should wages of construction labor be included in the index of material prices? Should one index be used for the electrical industry and another for the gas industry, or should the valuation be corrected by a general index? What construction materials should be included in the price index, and how without an established competitive market could reliable prices for an index be secured? In what way would differences in levels of efficiency in construction be allowed for if the valuation is to be on a present value basis?

I have grave doubts that a generally acceptable index number can be devised. It must not only satisfy the utility companies and the commissions but also the courts. Will the courts be willing to judge property rights by mathematical devices which they do not understand and, therefore, cannot know them to be equitable?

Mr. Prendergast does not consider the problem of whether the observed depreciation should be the amount of depreciation on present value as so determined or the depreciation of the original cost. In a table on page 151 he offers the suggestion that the depreciation shall be the amount claimed by the company.

Incidentally, it should be mentioned that the book contains no consideration of determining a rate schedule without the use of any valuation base whatsoever. The whole philosophy of the writing is that a proper rate schedule depends upon the amount of property invested in the public service. The remarks which a man with the regulatory experience of Mr. Prendergast could make on this phase of the rate question would have been helpful. The only place in which he touches this question is in his criticism of the action of the Wisconsin commission which ordered a rate reduction on the ground that the users of the utility service were temporarily unable to pay rates yielding the established fair rate of return.

"Public Utilities and the People" is a strong appeal for fair play to the public, both as users of service and as investors in public utility property whether publicly or privately operated.

—ARCH D. SCHULTZ

PUBLIC UTILITIES AND THE PEOPLE. By William A. Prendergast. New York. D. Appleton-Century Co. 1933. 380 pages. $3.

Abating the Smoke Nuisance by Central Stations

MR. HENRY Obermeyer's recent book on city smoke has both the faults and the merits of the fear variety of advertising. Much of it is overstated, unduly alarming, uncritical in choice of facts and authorities. Yet the essential conclusions are correct and critics irritated by the not infrequent exaggeration must remember that these are days when cultivated fears of bugaboos like halitosis or lack of vitamins pay enviable dividends to the cultivators. Like the good advertising man that he is, Mr. Obermeyer probably knows his Casper Milquetoasts.

One reason why utility executives may wish the book a public success is that Mr. Obermeyer is right about one point on which many experts have been wrong. This is that the chief source of smoke in cities is not factories, locomotives, or power houses but is the enormous number of small fires in homes, office buildings, and apartment houses. Most of the smoke from these sources is emitted invisibly and is unnoticed. Power-house smoke, if there is any, is concentrated. Even utility managers often entertain, I suspect, uneasy suspicions that critics of their chimneys may be right. The suspicion is not unsalutary, for many utilities could profitably do more in smoke abatement, yet smoke surveys prove that not the power houses but the domestic chimneys contribute from two thirds to nine tenths of the soot particles in city air.

Mr. Obermeyer is right, too, about four of the five chief damages which he indicts smoke as causing; damage to buildings, the cost of cleaning, lessened sunlight, and interference with aviation. I cannot agree so heartily with his fifth indictment, that city smoke damages public health, although this is the item most emphasized of all and which most people probably would be willing to grant with least argument. One of the surprising results of our own 8-year study of city smoke is that this accepted health damage cannot be proved. The cases commonly relied on for proof, such as the statistics of disease in Pittsburgh and Manchester, may be interpreted otherwise. A recent statistical study of death rates in American cities showed some of the smokiest to be among the most healthy and some of the sunniest to be deadly.

The part of the book that will be of greatest value to persons of professional interest in smoke is the admirable review of smoke ordinances and of methods and results of smoke-abatement effort in different communities. Mr. Obermeyer believes that much more can be accomplished by such official controls, but again I am skeptical. Ordinances and inspectors are effective only against visible smoke and chiefly against large offenders. So far as it goes this is good. Cities without smoke inspection undoubtedly need it. Yet most of the smoke is from small fires and is emitted invisibly. No present method of inspection touches this in the least. To ignore this fact seems to me to miss the one foremost essential of the whole smoke problem.

ONE smoke remedy which undoubtedly would be effective and which might appeal to a professorial brain trust would be to prohibit fires altogether inside city limits. This might even be profitable in the long run but it is scarcely practical politics. Another remedy often proposed is to prohibit bituminous coal but this breaks down because there would not be enough of other fuels and because the so-called smokeless ones, even gas, do produce some smoke in domestic fires.

Probably further improvement will come gradually by extension of utility programs of central-station heating, either by steam or by electricity, but in most localities this requires modifications of rate structures which are likely to be made but slowly.

—E. E. Free

STOP THAT SMOKE! By Henry Obermeyer. New York: Harper and Brothers. 289 pages. $2.50. 1933.

A Drive for Simplified Holding Company Structures

MICHAEL Faraday, the great English chemist and physicist, was once trying to explain to Gladstone and several others an important new discovery in science. Gladstone's only reaction was a shrug and a query, "Well, suppose it is as you say, of what use will it be?"

"Why, sir," replied Faraday, "there is every possibility that you will soon be able to tax it."

The idea that the dominant motive for creating anything could be for the sole purpose of deriving revenue regardless of any other consideration of practical usefulness is not more ludicrous than the existence of the complicated structure of many of our holding company systems. They are like the lilies of the field. They neither sow nor spin. Born in the fertile minds of corporate promoters, midwifed by corporate lawyers, the whole purpose of their existence seems to drain more revenue from operating utility subsidiaries into the pockets of the chosen few.

But that was the long, long ago in 1929. Today the holding company is, indeed, an object of pity. The New York *Times* editorially depicts its present sorry plight:

> "Pride of the late '20s, built layer on layer like a birthday cake, with creamy stuff between the layers, and sugar and candles on top. The cream is now sour, the frosting is gone, and there is no one left to light the candles—not even in the kitchens where it was cooked."

IT was Professor Ripley of Harvard who was first to call attention to the complicated structures of some of these hierarchies in the public utility field and to the menace inherent in them. In the gay nineties, the late William Jennings Bryan pointed to a railroad holding company only twice removed from its operating subsidiary as a "tool of Mammon." In the power industry, however, some of the corporate pyramids of 1927 remind one of the remark of Mark Twain to the effect that he was not superstitious but he "always did hate to sleep thirteen in a bed."

Belated perhaps, there has recently come a sharp change in the corporate structures of important holding company systems. One middle western system has already systematically eliminated all intervening holding concerns and within a few weeks will have only one controlling holding company superimposed on a flat level of operating subsidiaries. In the southern states the Commonwealth and Southern had already effected some reforms of simplification and is rumored to be contemplating more. Elsewhere utility holding families are cleaning house, practising strict corporate birth control and occasional judicious corporate infanticide. The industry generally shows that its ears were opened to the warning delivered by Mr. Floyd L. Carlisle at the last convention of the now defunct National Electric Light Association.

Mr. Carlisle was not alone among leaders in the industry who sensed the need for corporate simplification. During the last Lame Duck session of history, Mr. Owen Young confessed to the members of the Senate Banking and Currency Committee that it was impossible for mortal man to "get an accurate picture of the Insull set-up." He pictures Mr. Insull as a victim of his own corporate complexities. Mr. Young thought it would be well for the industry to work toward the end of "having only one holding company superimposed on one operating company."

Late in 1932, President Harry M. Addinsell of the Chase Harris Forbes Corporation, sellers of public utility securities, made a number of proposals for improving holding company practice. He advised the prohibition of "upstream" advance of funds from offspring to parent and more information to the public on the results of holding

company operation and, finally, simplification of corporate structures along the lines already indicated by Mr. Young, as well as by the industry's able literary nemesis, Mr. John T. Flynn. Mr. Addinsell especially urged the industry to adopt improved systems of accounting from top to bottom. State commissions have been pleading for this for years.

HOWEVER, with the bankers and leaders of the industry thus of one mind with its critics in recommending simplified holding company practice, it was inevitable that these modern prize creations of the legal eagles of the late twenties should be moving toward their proper place in the museum with the stuffed dodos and the perpetual motion machine models. There was some doubt, however, that in the rush of the various utility systems to "delouse" themselves of their corporate parasites, some of the much needed and useful affiliated corporate entities might also be fumigated. These are those radical critics of the industry who believe that a good holding company is a dead holding company and that every utility unit should be corporately free of all parental or collateral relations or heirs.

That such is not the case is amply demonstrated by the recent book of ex-Commissioner William A. Prendergast, reviewed elsewhere in this issue. This author is keenly aware of the abuses and downright frauds that have been perpetrated upon the investing and, to some extent, upon the consuming public by the unnecessary holding company.

He hastens to add, however, that what is necessary is not their complete extermination but strict regulation to an extent necessary to correct the abuses indicated, commencing with the issuance of securities and proceeding to a check-up of "managerial" and other services performed for operating affiliates under "contracts" calling for compensation in gross receipt percentages.

Mr. Prendergast states:

> "Each state should delegate to a commission the power to regulate—to authorize or prevent—the issuance of all securities of holding companies organized in the state. . . . Holding companies that control regulated operating subsidiaries should themselves be subject to regulation by the same authorities as the subsidiaries."

Add to this the wholesome advice given to the legal profession by Federal Coördinator Eastman at the meeting of the American Bar Association in Washington, D. C., almost a year ago. Mr. Eastman stated:

> "Under certain conditions and properly limited and safe-guarded, there may be a legitimate place for such corporations. But when instead of a reasonably simple corporate structure one finds a tangled maze of pyramided and interlacing companies, many of them strictly of the holding or dummy type, it requires no great amount of intelligence to know that some process of evasion or concealment or perversion is under way. Furthermore, the creator or architect of every such corporate labyrinth is bound to be some clever legal shark. In this manner the lawyer becomes the handmaiden of exploitation.
>
> "I suggest that your discussion might well probe deeper into this subject and consider not only the regulation of holding companies but also their creation—in other words, follow back the evil to its very sources. Some decades ago the statutes providing for the organization of corporations, and the powers and obligations which should be conferred or imposed upon them, were the subject of most earnest consideration in my own commonwealth of Massachusetts. These statutes became largely futile, when shrewd lawyers found a means of circumventing them by the conduct of business in corporate form through so-called voluntary associations or trusts. Not only that, but we now have a plague spot polluting the entire country in the little state of Delaware, which will peddle out any kind of charter which may be desired, so long as the corporation does not propose to do business in Delaware but will inflict itself only upon the citizens of other states. Nor is Delaware the only offender. The charters so granted are, as you know, very often preposterous travesties on what a charter should properly be."

All of which goes to show why corporations left home until 1929 and why they may be inclined to stay home hereafter.

—F. X. W.

The March of Events

Commission Halts Illinois State Power Project

FRANK R. MCNINCH, chairman of the Federal Power Commission, announced that the commission had rescinded its action authorizing a license to the state of Illinois for power development on the Illinois waterway. The action, Chairman McNinch explained, was taken to allow the state to answer objections subsequently filed by the Great Lakes states to alleged excessive authorized installation. The commission's action, he added, was taken without prejudice to the pending application of the state.

Minnesota, Wisconsin, Michigan, and Ohio recently joined in a protest to the Federal Power Commission against the terms of the Illinois license on the ground that the proposed generating installation was in excess of that justified under the limited diversion permitted by the United States Supreme Court in a recent suit by the Great Lakes states against the state of Illinois.

The complaining states alleged that the installation, provided in the proposed license, entailing large expenditures by the state, might be held to create equities in favor of a greater diversion from Lake Michigan than allowed by the Supreme Court decree. The commission's present action will allow both the complaining states and Illinois to present fully their respective claims with reference to this project. Governor Horner of Illinois, recently asked authority from the general assembly of his state to proceed with the proposed power development, but his legislature adjourned without granting it. In view of this fact, Chairman McNinch said, it is believed that the commission's action in reopening the question will not delay actual construction should the state later decide to proceed with the project.

NRA Officials Doubt Power over Utilities

DOUBT as to the NRA's ability to bring about higher wages and shorter hours in the public utility industry in the event the state supervisory officials object, exists among some officials of the Recovery Administration, it was disclosed by a Washington dispatch to the *Wall Street Journal* of August 22nd. In each court test between state and Federal authority, touching upon the public utility field, authoritative opinion is that the state authority would be upheld.

The question was brought about by the action of the New Hampshire Public Service Commission, which has sent out definite instructions to utilities to go slow in signing any NRA code. The commission called for approval of the commission before the utilities under its jurisdiction signed. Officials of the NRA said they had no official notice of the action of the New Hampshire body, and refused formal comment. Informal doubt as to the NRA authority to meet state resistance was expressed however.

Washington officials admitted that any NRA code would be likely to raise operating costs for utilities. As a result utilities will have to go to their state commissions and ask for rate raises, since in most cases utility rates have been brought down to the point where they no more than pay returns on investments.

In this circumstance NRA officials admit that utilities will be ground between Federal and state laws, as many state bodies are expected to refuse rate increases.

Three possibilities are foreseen:

One is that most of the utilities will find ways and means to go along with the NRA program without going to the state commissions for rate increases; in other words that they will coöperate voluntarily so far as they are able.

The second is that the state commissions will consent to go along with the NRA program and to grant such increases as may be shown to be absolutely necessary to take care of increased operating costs.

The third possibility. which informed NRA officials fear, is that many state commissions will follow the example of the New Hampshire commission, and that in the face of such warning, utilities will refuse to enter fully into the NRA program, because of inability to do so.

In discussing a possible court conflict between state and Federal authorities, one official said: "One hundred and fifty years of states' rights is not going to be thrown overboard over night."

A court test between state and Federal authority might arise in two ways. Federal officials might attempt to proceed against a company or some considerable section of the utility industry to force it to live up to provisions of the Recovery Act. Again a

utility coming under NRA jurisdiction might bring a case against its state commission demanding higher rates on the grounds of increased costs because of the NRA program.

So far as was known on August 24th, the New Hampshire commission was the only one to have issued a warning to its utilities to go slow on the NRA program. However, numerous queries from public utility commissions and from utilities companies have been received in Washington, and no generally satisfactory answers have been given to these.

Richard T. Higgins, chairman of the Connecticut Public Utilities Commission, has ruled that utilities in that state may pass on to the consumer increased costs brought about by NRA codes. He added, however, that he preferred utilities did not sign the codes. saying he did not favor the state relinquishing its regulatory powers.

Consolidated Gas of New York has petitioned the public service commission there to reconsider the recently ordered rate cut in the light of added costs that may be imposed by NRA codes. These codes have been received: Power and light, natural gas producing, gas operating, Bell Telephone, independent telephone. and traction.

Previously NRA officials have dodged the issue as to whether utilities come under the blanket code, by ruling that as the blanket code is voluntary, they may do as they please. They were urged, however, to coöperate with the recovery program.

In this connection the New Hampshire commission asked the Recovery Administration, soon after promulgation of the blanket code, whether state-regulated utilities were covered, and received a reply that they were not. Subsequently other officials of NRA said this ruling was a mistaken one. However, no formal ruling has yet been made. All NRA officials are agreed that state or municipally owned utilities are not under NRA rulings.

No Private Power Projects in Tennessee Valley

A GENERAL policy that power sites on the Tennessee river and its tributaries, on which Muscle Shoals is located, should be barred to private development was enunciated on August 10th by the Tennessee Valley Authority. The Authority laid claim to the exclusive right to supervise power development on the stream, in a statement by David E. Lilienthal, member of its board. Commissioner Lilienthal who had just returned from the valley area served notice that the authority would fight for its contention.

He conferred with Frank R. McNinch, chairman of the Power Commission, and told the power head the authority would interpose an objection to all applications by private interests for power developments on the river. The imminent expiration of a preliminary permit granted by the commission to the Southern Industries and Utilities, Inc., had brought the question forward. The preliminary permit was in connection with a proposed development at Aurora, Tennessee.

There was no indication of what action the commission would take on an application by W. G. Waldo, president of the Southern Industries and Utilities, Inc., for either a renewal of the preliminary permit or the granting of a permanent one, but officials believed the commission would hesitate before overruling an objection by the Tennessee Valley Authority. Commissioner Lilienthal said it was the Authority's view that Congress intended it should be charged with all future developments on the Tennessee river.

California

Report Filed on Hetch Hetchy Power Project

A COMPLETE report on proposed methods of bringing Hetch Hetchy power into San Francisco, together with recommendations on their feasibility, was presented to the San Francisco Public Utilities Commission on August 11th by Edward C. Cahill, manager of utilities for transmission to the board of supervisors.

The report was in preparation for several weeks, following the request by the board to the commission that it assemble data and make recommendations on the subject, in view of the prospect of obtaining funds from the Federal government to carry out the project. Two separate plans were drawn up under Mr. Cahill's supervision and from these data Mr. Cahill drafted his own scheme. One plan was prepared by Randall Ellis, rate expert in City Attorney O'Toole's office and the other by Paul Ost, engineer of the commission and associates. The plan proposed by Mr. Ellis contemplated construction of a power house at Red Mountain Bar, extension of the transmission line from Newark to the city, location of step-down stations in the city of San Francisco with distribution to homes and factories in the Mission Excelsior district, at a total cost of about $3,500,000. While neither Mr. Ost's plan nor Mr. Cahill's final plan were

made public, it was reported that they follow Mr. Ellis' plan in general form, but at a somewhat larger outlay to insure more definite income from the sale of the power.

District of Columbia

Five-Cent Fare Edict May Mean Zone Rates

THE recent order of the District of Columbia Public Utilities Commission establishing a short-haul bus route with a 5-cent fare, was viewed on August 15th in utility circles as the forerunner of a zone system in rate regulation of mass transportation agencies of the city of Washington. Long advocated by Richmond B. Keech, people's counsel before the Commission, and others interested in utility problems, as the most potent weapon to fight the low-rate taxicab competition, the new short-haul bus line will be in the nature of an experiment. If successful, utility experts said, the plan might be adopted on a city-wide scale when the transportation lines are merged. The initial short-haul route will be confined to the business section, designed primarily to serve employees of the Bureau of Engraving and Printing, the Department of Agriculture, and the Department of Commerce. The line will make a loop around a territory bounded by principal streets of the business section of the city. The order affects only the Washington Railway & Electric Co., and was issued chiefly as a result of efforts of two Virginia bus line operators to get permission to capture the traffic from the large government departments south of Pennsylvania avenue.

The company, it was believed, will establish the line without resorting to court appeal because of criticism leveled at the service of the companies by the commission for failure to meet the demands of the public for modern transportation.

With the ultimate consummation of the merger of the two street car companies operating in the city of Washington which was authorized by a recent act of Congress, there likely will be no further steps taken to establish additional short-haul lines for the next several months. Utility experts were confident, however, that both the public utilities commission of the District of Columbia and the new unified car company, would give serious consideration to the 5-cent short-haul plan as one means of regaining some of the business lost to the 20-cent flat rate taxicabs.

Georgia

New Commission Seeks to Cut Phone and Rail Rates

THE Georgia Public Service Commission, on August 19th, issued an order citing all of the railroads operating in the state to show cause on October 10th why all freight rates effective in the state should not be restored to the level of July 1, 1913. The order specifically calls for an answer on class and commodity rates, which will include all freight.

Hearing on the order will begin at 10 o'clock on the morning of October 10th, Chairman Jud P. Wilhoit of the public service commission said in announcing the issuance of the order. The hearing will be held in the senate chamber at the state capitol and will be open to the public.

The order is the second blanket rule *nisi* issued by the commission since its installation by Governor Eugene Talmadge in July. the other blanket rule having been issued against telephone companies. The commission also has cited the railroads on various special rates, but the order of August 19th covers everything hauled by the carriers between points within the state. Chairman Wilhoit said the order was issued after a careful study of the situation by members of commission and experts in its employ. George D. Kreuger, railroad rate expert, employed by the commission, said that the freight rates now in effect in Georgia average about 40 per cent higher than they were on July 1, 1913.

Former Commissioners Lose Ouster Petitions

ALL the members of the suspended public service commission with the exception of Perry T. Knight of Valdosta have sought to regain their post through filing ouster proceedings. These proceedings have been

dismissed by the superior court. The former commissioners have been given notice and are planning to carry these dismissals to the supreme court.

Judge Edgar E. Pomeroy of Fulton superior court on August 8th threw out the attempt of the suspended commissioners to obtain a court review of the investigation conducted by Governor Eugene Talmadge and the governor's order suspending the commissioners, when he refused to sanction the filing of a certiorari in behalf of Albert W. Woodruff, of Decatur, a suspended commissioner, and called upon attorneys for James A. Perry, suspended commission chairman, and Jule W. Felton, suspended commission, to show cause why the sanction of their writs of certiorari should not be rescinded. The judge indicated that his study of legal authorities inclined him to the opinion that the applications of the suspended commissioners are without proper status in court. It was known that regardless of the court's action the governor does not intend to answer the writ of certiorari and the law provides that a court may rule on the answer but not on the writ. If the governor had failed to answer, his attorney pointed out that Judge Pomeroy would have nothing on which to act and the former commissioners could not file a mandamus forcing action because mandamus against the governor is prohibited by Georgia law. The fourth of the five suspended members of the Georgia commission went into court on August 12th in an effort to regain the office lost when Walter R. McDonald of Augusta, filed *quo warranto* proceedings against J. T. (Tobe) Daniel, of LaGrange.

James A. Perry, suspended chairman of the Georgia commission, on August 2nd issued a statement in which he revealed that he will present a complete survey of the situation growing out of the suspension of the old board, asserting that Governor Talmadge, who suspended him and his fellow commissioners, "is not interested in reducing rates."

In his public statement former Chairman Perry denied that he was attempting to tie up activities of the new board by lawsuits pointing out that Governor Talmadge was wholly responsible for the unfortunate consequences of the present situation following his "wilful, reckless disregard for law and decency." Chairman Perry declared that he was shocked at the boast of Governor Talmadge that the members of the new commission would do as he told them or else be fired as well as at the apparent lack of self-respect of the new appointees in serving under such conditions.

Former Chairman Perry declared that he would show through Georgia papers evidence that Governor Talmadge was not at all interested in reducing rates and that he had deliberately crippled the available legal agency for obtaining such reduction by appointing a commission not one of which was equipped by background and experience to exercise the technical and complicated duties of utility regulation. He charged that the new commission had doubled its personnel and cost to the state and had become a dumping ground for political appointees without trace of qualifications for exercising their new duties. The public statement was published in the Atlanta *Constitution* of August 10th.

Illinois

Date to Be Set for Utility Rate Cut Conferences

THE Illinois Commerce Commission placed an announcement in the Chicago *Daily Tribune* on August 16th that they will set hearings or conferences shortly after that date with all the utilities in the state regarding the possibility of rate reductions. A survey of the utility properties and earnings was begun on August 1st, when the new law giving the commission power to initiate rate investigations at the expense of the companies involved became effective.

The commission has employed the firm of Mark Wolff & Associates and Dr. William A. Dittmer, widely known utility consultants, who are assisting the commission engineers and accountants in making the survey.

Twenty-seven electric companies were cited in April to show cause why their rates should not be reduced, and these adjustments are being carried out through the informal conference method suggested by Chairman Benjamin F. Lindheimer as an alternative to prolonged public hearings.

Former Insull Director Sued by Receiver

SUITS to recover $37,000,000 from officers and directors of Corporation Securities Company, bankrupt Insull investment house, have been authorized by Garfield Charles, referee in bankruptcy. Civil action against all who served on the board or as officers since 1930 until its collapse last year were foreseen some time ago when the trustee

filed a claim against the estate of the late Edward F. Swift, packing magnate. The claim was $37,308,646. Sam Howard, trustee in bankruptcy, has been given authority by the Federal referee to sue every officer and director for that amount, predicated on the contention that each was responsible for the alleged maladministration and fraudulent stock transactions that led to the collapse of Corporation Securities and affiliated companies. Criminal action has also been taken against a number of those associated with the company in the form of indictments charging use of the mails to defraud.

Indiana

NRA Code a Defense to Rate Reduction

PROBABLY one of the first times that the increased operating costs, likely to be incurred by the utilities under the NRA voluntary blanket agreement, has been considered with respect to rate making of utilities, occurred in a recent hearing by the Indiana commission on the electric rates of the Public Service Company, which is negotiating with Sherman Minton, state public counsellor. John Shannahan, president of the company, asked a 3-month continuation of the present rates on the ground that no one could determine the effect of the NRA code to be signed by the company. Perry McCart, chairman of the commission, fixed September 11th as the date on which to determine whether the demand for rates could be met by negotiations and asserted again that if no definite compromise was in sight then, the commission would act on the rate complaint

Kentucky

Permit for Private Power Project on Tennessee River Sought

APPLICATION was filed with the Federal Power Commission on August 16th by Southern Industries & Utilities, Inc., for a 50-year construction permit at the Aurora Dam in the lower Tennessee river. This concern was granted a preliminary permit for that site by the commission in 1931. The site of the proposed development is fifty-five miles upstream from the mouth of the river at Paducah. If the application is granted the power house will be constructed in Caloway county, Kentucky, and the lock just across the state line in Stewart county, Tennessee.

Early employment for hundreds and eventually thousands of men in a region of widespread destitution was expected to be an outstanding benefit to the public if such application for the Federal license to construct the Aurora Dam is granted under the Federal Waterpower Act, according to a statement by W. G. Waldo, president of the company. Outlining the project, President Waldo stated that the proposed project will not be in competition with the government project at Muscle Shoals.

Maine

Asks Federal Funds for Tidal Power Survey

REPRESENTATIVE Edward C. Moran said on August 11th that he would address a formal request to the Federal Power Commission to make a complete survey of the Dexter P. Cooper power project. He indicated that he expected the commission to grant the request and send an engineering staff to examine the project, utilizing part of the $400,000 allotted to the commission for such a purpose. The Cooper project proposes to harness the tides of the Bay of Fundy to produce power. The main point, Moran said, was to discover whether the project was technically feasible and economically practicable. If it is, then it fulfils the important qualifications for a public works project, especially since it is obvious that such a tremendous project would draw off the Maine unemployment pool. It would reëmploy about 8,000 men for two and a half years.

Minnesota

Telephone Property Merger Gets Federal Approval

THE Interstate Commerce Commission on August 15th authorized the Northwestern Bell Telephone Company to acquire control of the Tri-State Telephone and Telegraph Company through purchase of capital stock, according to a United Press dispatch from Washington, published in the Minneapolis *Journal* of that date. The decision climaxes a controversy which has split the Minnesota Railroad and Warehouse Commission and other official channels for more than two years and means that Twin City residents soon will have only one phone system between them. The commission said in its decision it felt the acquisition would result in "better and more economical service, particularly at St. Paul and Minneapolis, and that telephone users will be benefited by immediate rate reductions. It is difficult to see any advantage to be gained by the public from a denial of this application, unless it be the opportunity to endeavor to force the applicants to promise a greater rate reduction.

In a statement given out the same day by Frank Bracelin, general manager of the Northwestern Bell Company, it was said that when the stock transfer is made and the state commission has approved the new rates, "they will be put into effect as soon as practicable." These rate reductions according to Mr. Bracelin, will result in savings to about 100,000 telephone customers in the Twin Cities. The reductions will include the lowering of individual line residence rates from $3.75 to $3.50 net per month, and two-party line residence rates from $3 to $2.75 net per month. In addition, a new two-party line residence message rate will be established at $2.25 net per month for 40 calls.

Approval of the merger does not end the controversy that has existed for two years over the proposal, members of the Minnesota Railroad and Warehouse Commission said on August 15th. C. J. Laurisch, who with Knud Wefald, also a member of the commission, opposed the transfer and attacked Attorney General Harry H. Peterson for approving it, said the companies now must come before the commission for authority to make the actual physical transfer of telephone exchanges. The Federal commission's authority existed only as to the stock transfer, according to Mr. Laurisch.

Mr. Laurisch also stated that if the Northwestern Company puts through the proposed voluntary reduction in rates the schedule would have to be submitted to the commission for approval. Frank W. Matson, chairman of the utility commission, has favored the merger.

Missouri

Voluntary Rate Cut Gives St. Louis Record Low Rate

A VOLUNTARY reduction of $1,600,000 in electric rates in St. Louis and vicinity was announced by the Union Electric Light and Power Company, August 23rd. The new schedule gives electric service to St. Louis homes at the lowest rate for fuel generated current in the United States, according to company officials. Virtually all residential and commercial light users are benefited by the new rate, the company announcement stated. A total of 289,000 of the utility's 309,000 customers will profit by the reduction.

At the present rate of consumption, bills of St. Louis customers will be cut as much as 35 per cent, company representatives asserted, and the average reduction for St. Louis and St. Louis county consumers will be 17.5 per cent. The company will absorb the 3 per cent Federal tax heretofore paid by the customer.

Under the new schedule, effective November 1, 1933, residents of St. Louis will receive the first 32 kilowatt hours per month at 5 cents, the next 168 at 2.5 cents, and all over 200 at 1.5 cents, with a 5 per cent discount for prompt payment. The number of kilowatt hours billed at the initial rate now varies according to the size of the residence, but the new schedule, it was explained, will make no distinction between different-sized premises.

The small number of customers whose needs are not adapted to the new rate will have the option of continuing on the old rate, if it is more favorable to them, the company announced. The promise is made that no rates will be increased under the new schedule.

Governor Names Two New Commissioners

GOVERNOR Park appointed two new members of the state public service commission to fill the vacancies created by the resignation of former Commissioner John H. Porter and former Chairman Milton R. Stahl, both of St. Louis. Succeeding Commissioner Porter will be W. M. Anderson of Harrison-

ville, a Democrat. Under the appointment which is subject to confirmation by the senate, Commissioner Anderson will serve until April 15, 1937. Mr. Anderson is a lawyer and was serving as prosecuting attorney of Cass county. His appointment completes the full membership of the commission which comprises three Democrats and two Republicans, reversing the political predominance of three Republicans and two Democrats under the last twelve years of Republican administration.

Previous to the appointment of Commissioner Anderson, Governor Park appointed William Stoecker, Webster Groves, engineer, to succeed former Chairman Milton R. Stahl.

New York

Publicly Owned Milk Plants Urged

THE New York legislature had before it on August 21st a resolution calling for the creation of "a publicly owned and operated nonprofit-making corporation for processing and distributing milk."

The plan was submitted by the Continental Congress of Workers and Farmers which met in Albany on August 21st with about 400 delegates present, representing trade unions, farmers, and Socialist groups throughout the state. At the same time the congress criticized Governor Lehman for "the brutal and unconstitutional" methods of the state police in putting down the New York milk strike. Norman Thomas, Socialist candidate for President in the last election, charged that the large milk distributors were responsible for the low milk prices.

Regulation Reform Fails in Special Session

DESPITE strong pressure from Governor Lehman and in the face of his special message, members of his own party again killed in committee, August 22nd, all the major items in his public utility program, according to the New York *Times*.

The Senate committee on public service, controlled by the Democrats, voted not to send to the floor three of the governor's four bills, one which would have permitted immediate rate reductions by the public service commission; another which would have created a revolving fund of $300,000 to begin the work at once, and a third which would have allowed the commission to assess part of the cost of rate investigations on the utility companies.

The fourth measure in the Lehman program provides for payment by the utility companies of interest on deposits of consumers after September 1st. The committee made a favorable report on this bill.

Senator Thomas F. Burchill announced the committee's action. but immediately an air of mystery developed about the circumstances under which the vote was taken as well as controversy among some Democratic members as to where they stood. It was made known officially that only five votes had been obtained for a favorable report on the three important bills. Six votes, or a full majority, were necessary. Governor Lehman was still optimistic that the bills might be pressed to passage.

"I think the bills may yet get out of committee," he said on August 23rd. Senator Dunnigan, Democratic leader, indicated the same attitude and it was suggested that Governor Lehman might apply stronger measures to force support for the program from his own party.

Utility to Oppose Rate Cut as NRA Obstacle

THE 6 per cent cut in electric rates ordered by the public service commission for September 1st in New York city will be opposed by the companies affected, George B. Cortelyou, president of the Consolidated Gas Company, revealed on August 21st. An application to the commission to reconsider its action, partly on the ground that the companies must increase wages and pay more for material under the national recovery program, will be filed in the near future, Mr. Cortelyou declared. His statement did not specify the course to be taken by the companies in the event that the commission refused to reconsider. One phrase, however, which characterized the rate decision as "a shocking departure from the law," hinted at the possibility of court action. Milo R. Maltbie, chairman of the Commission, took issue with Mr. Cortelyou, after the latter's statement had been published. The industrial code put forward by utilities companies has not been approved by the authorities at Washington, Mr. Maltbie declared.

In addition, he challenged a statement by Mr. Cortelyou that the hearings on electric rates had been "summarily closed," and asserted that, on the contrary, nearly three months were devoted to hearings. Mr. Cortelyou, in his statement, indicated that the companies constituting the Consolidated Gas group would plead that they did not increase dividends unduly, as asserted in connection with the rate decision.

North Carolina

Statewide Utility Probe Asked

GOVERNOR J. C. B. Ehringhaus requested an immediate and thorough investigation into public utilities corporations by the state corporation commission. Special attention was asked to be given to electric power and telephone companies. In a letter to Stanley Winborne, corporation commissioner, made public on August 14th, the governor said that accurate information is needed for making equitable adjustments of utility company valuations and of the rates charged for their services.

North Dakota

Utilities Contest Gross Receipts Tax

OWING to complications resulting from the passage of the gross earnings tax law the state of North Dakota and political subdivisions are going to be short, for a time at least, large sums of tax money heretofore paid by the power companies. The new tax passed by the last legislature absolves the companies from paying any other taxes except special assessment taxes where they own real estate.

An assessment of 12 per cent of the gross earnings is assessed against the power companies under the new law. It is understood they are preparing to take the case into Federal court when the law becomes operative on January 1st, next, on the ground that it is confiscatory and unconstitutional. The law was passed on the last day of the session after the constitutional time limit was past and the constitutionality of the "long" last day may be brought into the case. The companies have paid their taxes for 1932 and under the old law the state board of equalization would have made a new levy against the properties of the power companies in September. The taxes would be delinquent after December 31st. Under the gross earning law the equalization board will not make the levy until next April and the taxes will not be delinquent until August 1, 1934.

Oklahoma

Governor Bans Funds for Commission Use

GOVERNOR Murray of Oklahoma, during the first week of August, formally prohibited the expenditures from the $50,000 appropriation of the corporation commission for public utility investigations during the current fiscal year. Commission employees hired from the fund planned to go to court at once to test his right to dictate the expenditures, according to the *Electrical World*.

Earlier, the chief executive had demanded that F. C. Carter, state auditor, honor no claims against the fund. Subsequently using the power given to him by the legislature to limit expenditures from quarter to quarter, he ordered the fund stricken off. The employees have retained E. S. Ratliff, former commission attorney, for the court test which will involve validity of the legislative enactment in the general appropriation bills under which the governor has been paring estimates. Suit for mandamus to force Carter to issue the warrants is planned and may be filed in district court shortly, according to present plans.

Tennessee

West Tennessee Utilities Ask for Federal Power

OFFICIALS from West Tennessee cities conferred in Florence. Alabama, on August 10th with Superintendent Frederick L. Schlemmerm of the Muscle Shoals power plant and Barton M. Jones, Tennessee Valley Authority engineer, relative to transmission of electricity to their respective cities. The visiting city officials formed an organi-

zation with Mayor T. L. Hardeman, of Henderson, chairman, and Hugh Harvey, of Jackson, secretary.

The association adopted a resolution pledging its support to the proposed building of a transmission line from Muscle Shoals to Memphis with tie-ins for other West Tennessee municipalities. Plans for continuing negotiations with the Tennessee Valley Authority were made.

The association elected the following directors: Mayor Hardeman, of Henderson, J. E. Hollingsworth, of Whiteville, W. W. Travis, of Martin, J. T. Partin, of Parsons, Paul C. Green, of Bells, H. Wilson, of Dyer, J. J. Norma, of Rutherford, John R. McKee, of Kenton, Joe Freed, of Trenton, C. C. Guill, of Union City, John D. Deny, of Milan, R. M. Jones, of Jackson, J. W. Jacobs, of Bolivar, and H. P. Woods of Selmer.

Meantime a news item in the Knoxville *Sentinel* for August 9th stated that the city council of that city had instructions to approach the Tennessee Public Service Company for a tentative price on the company's distribution system. Service Director Mynatt and City Manager Bass were also to seek estimates and information on the cost of putting in a new distribution system.

Washington

Spokane to Tax All Utilities

SPOKANE city council on August 7th voted a tax on gross receipts of all privately owned public utilities operating in that city and then moved to enact a sales tax on "luxuries." The public utilities tax ranges from one per cent of the gross earnings of a gas company to 3 per cent in the case of an electric power company, and becomes effective October 1st. J. E. Royer, assistant general manager of the Washington Water Power Company, said his organization would oppose the tax even to the extent of carrying the fight to the United States Supreme Court. The state supreme court recently upheld a similar tax law, enacted by Seattle. The tax is passed on to utility ratepayers in Washington.

Seattle Utilities Report Increased Demand

CHEERING news of marked business improvement is humming along the 916,717 miles of telephone wire in use by the Pacific Telephone & Telegraph Company in Washington. During the first week in August the company installed more new telephones than were disconnected in Seattle and the state. This is the first time, with one exception, that such a condition has existed since 1930, according to I. F. Dix, vice president and general manager of the Pacific Telephone & Telegraph Company. The Seattle Gas Company, Puget Sound Power & Light Company, City Light and City Water Departments report similar service increases.

West Virginia

Federal Power Project on Local Site Proposed

FEDERAL development of water power in West Virginia—advocated by Congressman Robert Ramsay of Follansbee, West Va.,—loomed as a distinct possibility for the future as the Federal Power Commission on August 10th prepared to make a comprehensive national plan for the development of power and transmission of electricity, to examine projects referred to it by the public works administration and make a study into the cost of transmitting current from generating stations to consumers. Of primary interest to West Virginia, particularly to the southern section of the state, will be the outcome of the celebrated New River Case, involving the right of the Federal Power Commission to exercise full control over the $11,000,000 project of the Appalachian Electric Power Company on New River, at Radford, Pulaski county, Virginia. In the last special session of the Congress, Representative Ramsay made an extended speech on the floor of the house, against what he termed "exorbitant rates" charged to consumers in West Virginia for electric current. Later Representative Ramsay made a personal appeal to President Roosevelt for a public pronouncement to indicate the chief executive's advocacy of state development of water power in West Virginia.

The Latest Utility Rulings

Missouri Commission Refuses Lower Rates for Service to Army

THE state public service commission of Missouri on August 15th dismissed for want of jurisdiction an application by Major Frederick Schoenfeld of the Quartermasters' Corps of the Army for a flat 10 per cent reduction in utility rates now paid by the Army in Missouri. This is the second time in as many formal orders where state commissions have refused to grant the nation-wide demand of the War Department for an arbitrary 10 per cent reduction in rates for utility service. A similar order was handed down by the Massachusetts department a few days previous.

The reduction was asked for electrical rates at St. Louis medical depot; Richards' Field, Kansas City; United States Rifle Range at Arcadia; Jefferson Barracks, near St. Louis; gas rates at the National Cemetery, Jefferson City; water rates at the national cemeteries at Jefferson City and Springfield. The order written by Chairman John C. Collett of the commission stated:

> "It is not consonant with the principles of regulation to say to a utility that it must charge one of a number of customers of a class I rate and at the same time to make a higher charge to all other patrons of the same class. Neither is it within the power of the commission. Yet that is the very thing which the applications request with no reason assigned therefor other than that the application is made at the command of the applicant's superior officer. No doubt that was an excellent reason for the filing of the application, but it certainly furnishes no ground for any action authorized by statute."

Re Schoenfeld.

Rate Reduction Ordered for New York City Power

RATES charged for electricity by five concerns supplying New York city with current were to be reduced 6 per cent on September 1st for a period of one year. During the same period the Westchester Lighting Company was to slice 3 per cent from its bills to suburban customers. Such was the order of the New York Public Service Commission in an opinion which declared that while business in general had been suffering since 1929, the electric light companies in the vicinities of New York had increased their earnings, built up surpluses, declared larger dividends than were distributed prior to 1929, and paid higher salaries to officials than were in effect in the prosperous era that ended for most people nearly four years ago.

Two of the five companies affected by the order supply gas service also, but the commission decided that it had not yet accumulated sufficient evidence to justify an order requiring reduction for gas. Reductions for electricity were temporary, pending conclusions of the rate hearings expected during the coming year. On September 1, 1934, rates may be still further reduced, or they may be increased, depending on conditions and outlooks in the interim.

According to the New York *Herald Tribune,* it was the wish of Milo R. Maltbie, chairman of the commission, to order a flat 10 per cent cut to all bills for metered electric service to general consumers for one year. He was supported by Commissioner Maurice C. Burritt, but his motion was lost through the opposition of Commissioner Neal Brewster, who proposed that reduction be limited to 6 per cent for the five companies of the Edison system

and to 3 per cent for the Westchester Lighting Company. No reduction was imposed on the Yonkers Electric Light and Power Company, which apparently has not enjoyed the prosperity shared by the others. The Commission estimated that the 6 per cent cuts would save bills paid by New York citizens about $8,900,000 during the coming year. Commissioner Maltbie figured that his suggested 10 per cent reduction would have saved them $15,000,000.

To have pushed the order for a 10 per cent cut through the commission would have required a majority vote—three of the five members. When the vote was taken during the middle of August two of the commissioners were absent, Commissioner Van Namee and Lunn. Accordingly, objection by Commissioner Brewster impaired the unanimity of opinion of the remaining three commissioners and blocked the 10 per cent cut sponsored by Chairman Maltbie.

In a supplementary opinion Commissioner Brewster held that the conclusions reached by Chairman Maltbie in his memorandum had gone beyond the power of the commission to enforce, since the companies had earned less than $9,000,000 in 1932 in excess of 6 per cent of the rate base. Commissioner Brewster indicated that he believed the commission was without power to seek a $15,000,000 cut which might eat into surpluses. Rather than risk "futile litigation" on the subject he preferred to order a lesser reduction which the commission readily could compel the companies to grant. Commissioners Maltbie and Burritt explained that they had swung over to Commissioner Brewster's opinion in order that some reductions would be put into effect for immediate benefit of consumers. The five companies ordered to cut their rates 6 per cent are the New York Edison Company, United Electric Light and Power Company, Brooklyn Edison Company, New York and Queens Electric Light and Power Company, and the Bronx Gas and Electric Company. All five concerns, as well as the Westchester and Yonkers companies, are controlled directly or indirectly by the Consolidated Gas Company, only a small fraction of the stock of three companies out of the seven being held by outsiders. Hearings out of which the emergency reduction resulted began last May and were concluded early in August. Two other utility concerns, the Queens Borough Gas and Electric Company and the Staten Island Edison Company, are independent of the Consolidated group. But the opinion ordering rate reductions related only to the companies of the Consolidated system. The Queens Borough and Staten Island companies will be dealt with, the commission announced, in subsequent opinions. As a group the commission found that the nine utilities were paying dividends at an annual rate at the end of 1931 almost 25 per cent higher than the group paid in 1932, while the dividends paid in 1932 were at a rate 16.5 per cent above the group rate for June, 1929. If the current business improvement continues it was evident, the commission decided, that 1933 would show an advance on 1932 in consumption of electricity.

"These nine companies," said the 48-page memorandum, "earned 9.6 per cent on their net worth in 1929, 10.1 per cent in 1930, 9.2 per cent in 1931, and 8.3 per cent in 1932." Stressing its belief that utilities have been among the favored few least affected by the depression, and that the New York concerns were "virtually unaffected" by it, the report recalled that "these rates are in marked contrast with the average returns obtained by other corporations whose prices are not regulated." The report pointed out that while there may be some questions as to the basis upon which to compare utilities with non-utilities, it is quite clear from the figures placed in the records, that even in the prosperous years from 1926 to 1929, the utilities involved had obtained a much higher return than nonutility corporations for the same period, and there could be no question but that the difference between the two groups for the

past three years has been so great as to make practically all nonutility enterprises envy these utilities.

The commission's report concluded that the records contained no facts to warrant the claim frequently made that utilities in the period prior to the depression obtained smaller returns than the average corporation and hence should be permitted higher returns than the average corporation during the depression. The commission's table showing the percentage of return on the rate base for each of the companies for the last three years of the depression follows:

	1930	1931	1932
New York Edison Company	8.42	7.94	6.22
United Electric Light and Power Company	7.60	8.48	8.48
Brooklyn Edison Company	9.63	8.36	7.48
New York & Queens Electric Light and Power Company	9.40	8.00	7.33
Bronx Gas and Electric Company	15.04	16.45	11.94
Westchester Lighting Company	8.37	7.73	7.21
Yonkers Electric Light and Power Company	5.76	5.97	7.07

The excess above 6 per cent for each of the companies is shown in the following table:

	1930	1931	1932
New York Edison Company	$7,861,126	$6,373,279	$713,499
United Electric Light and Power Company	1,759,684	2,946,393	3,065,562
Brooklyn Edison Company	6,605,231	4,808,064	3,208,996
New York & Queens Electric Light and Power Co.	1,810,531	1,160,597	833,659
Bronx Gas and Electric Company	858,801	1,033,369	600,534
Westchester Lighting Company	1,809,316	1,394,539	1,023,398
Yonkers Electric Light and Power Company	30,208*	3,853*	151,033
Totals	$20,674,841	$17,712,388	$9,596,681

* Deficit below 6 per cent.

The controlling opinion written by Commissioner Brewster explains the difference between his own position and that of Chairman Maltbie as follows:

> "The conclusion reached by Chairman Maltbie in his memorandum goes far beyond the power of the commission to order or enforce.
>
> "On page 32 of his (Chairman Maltbie's) memorandum he states that based upon the record in this case the combined companies earned in 1932 at present effective rates $8,871,681 in excess of 6 per cent on the 'rate base' testified to by the commission's accountants. He concludes that the companies should be ordered to make reductions of $15,000,000, basing his determination upon the large surpluses of the companies, the large dividends paid on the stated value of the common stock outstanding, and the excess over 6 per cent of income on the stated value of the common stock outstanding.
>
> "Summarized, he bases his decision upon accretions to surplus and not upon capital invested. The statute contains no provision for the basis used by him, and to make such an order is futile, however we may wish to do so. It may very well be that the owners of these properties should, in view of their stable and generous earnings in the last few years of the depression, forego present earnings until the return of the general prosperity which all of the country is striving for. Has the commission any power to compel them to do so? I believe we have not, and so believing, I cannot vote for a determination which, in my opinion, will result only in futile litigation and defeat any reduction in rates which the consumers are entitled to on the record and under the law."

New York Edison Co. et al.

Washington Commission Cuts Rates for Rural Service

SAVINGS approximating 25 per cent to most of the customers of three power companies for their 1933 irrigation power and spray service, estimated by C. K. Murray, state director of public works, to total about $175,000 were made public in an order issued by the department on August 9th. The order disposed of one of the major cases in the new administration's statewide in-

vestigation of private utilities, directing the three companies to effect temporary reductions of from 10 to 35 per cent.

The companies, the Puget Sound Power & Light, the Washington Water Power, and the Pacific Power & Light, were also ordered to eliminate existing rate structures for those classes of service, substituting the so-called California rate structure, beginning with the 1934 season. The reductions this year were made retroactive to May 5th, when the department entered its complaint. The order set forth that farmers are now paying relatively twice as much for power as in 1929, and that "any earning at all would be an experience" for them.

The opinion of the Washington Department of Public Works continued in part:

> "Men are notoriously shortsighted, and utility executives are no exception. The hit-and-run driver is not confined to the highways. In business he is everywhere grabbing at a temporary profit here and there, with his eyes fixed only on the current year's balance sheet. It is a truism that present advantage may well be a future loss and for future advantages it is frequently necessary to bear a present hardship. The companies are in this position."

Re Puget Sound Power & Light Co. et al.

Detroit Orders Rate Cut $1,500,000

A REDUCTION of $1,500,000 a year in the commercial residential rates of the Detroit Edison Co. has been ordered by the Michigan Public Utilities Commission. The order was an outcome of the rate case filed by the city of Detroit in the spring of 1932. Several other communities intervened, as did a group of manufacturers. The controlling opinion was written by Chairman Kit F. Clardy and concurred in by Commissioner Robert H. Dunn. Commissioner Harold J. Waples concurred in the result, expressing a dissenting opinion on several legal points. Commissioner Harry C. McClure did not vote while Commissioner Fitzgerald was at the time recovering from an automobile accident in a Grand Rapids hospital.

Chairman Clardy included in his report a severe rebuke to Commissioner Fitzgerald who has issued many public statements attacking his colleagues and to James H. Lee, assistant corporation counsel of Detroit. He stated that:

> "Had it not been for the highly unethical conduct of a member of this commission, in collaboration with the assistant corporation counsel representing the city of Detroit, while the case was yet before us, it might have been possible for this commission to have reached a decision at an earlier date."

The opinion analyzes in some detail the theories presented by Lee, as attorney, and James H. Morgan, as statistician, for the city, by Frank Robson, attorney for the manufacturers, and by Harold Goodman, attorney, and Manfred K. Toeppen, engineer, for the cities of Dearborn and River Rouge. Morgan thought an immediate cut of $1,500,000 a year in Edison revenues would be justifiable. Goodman and Toeppen presented a valuation theory calling for a cut of about $5,000,000. Counsel for Detroit wanted an immediate reduction to be followed by an audit and appraisal to determine what would be a fair "permanent" rate schedule. It was estimated that an audit and appraisal might cost as much as $500,000 and last more than a year. The commission found no reason for ordering an audit and appraisal.

Answering the contention that the general decline in commodity prices should be accompanied by an equal reduction in utility rates, Chairman Clardy's opinion stated:

> "The record indicates that during the past decade the company has been steadily reducing its rates in the various fields of service. It must be remembered in this connection that under proper regulation services sold by utilities are not permitted to soar in price while other commodities are at

the peak. The very purpose of regulation is to see that the companies earn no more than a fair amount at all times. Under this conception of the law they are not permitted to earn an excessive amount in abnormally good times. It is for precisely this reason that their rates cannot always be drastically reduced when the prices of general commodities start downward. In the present case, instead of the price of the service having been raised in the same manner as commodity prices during the boom years, the record discloses that rates were being steadily pushed downward by voluntary action on the part of the company.

"The argument that the general decline in commodity prices should be accompanied by an equal reduction in utility rates has been advanced in a number of cases presented to the commission. It has been chiefly advocated by those who at some time or other would find it necessary to seek the suffrages of their fellow citizens. It has rarely been seriously advanced by counsel.

"It cannot be denied that it has a reasonable sound and that to a superficial observer it seems unanswerable. One who has little time for the study of these problems cannot be blamed for accepting such an argument as the major reason why rates should be arbitrarily reduced. No such excuse can be given for public officers. They have the same opportunity as the commission to discover the facts, and it is as much their duty as it is ours to determine the soundness and the truth of such matters. Their earnest advocacy of a false and unsound argument before the commission can, and does, undeniably lead the public generally to an acceptance of such arguments.

"In the present case the city's representatives chose to play upon that string and to rely upon that argument almost entirely. The many political speeches counsel for the city made during the progress of the case will give the answer as to why we took that position. Suffice it to say that no other counsel in the case for any of the other cities or intervenors took such a position."

Clardy quoted figures indicating that the annual bill paid by the average domestic consumer is $42.60 in New York, $34.56 in Chicago, $40.68 in Philadelphia, and only $31.59 in Detroit. He also declared that acceptance of the claims of either Detroit or the interveners would result in cutting the company's return to something below 6 per cent, which, he stated, would result in confiscation. He estimated that the company is earning less than 5 per cent return under present conditions and that the $1,500,000 reduction is only warranted at all because of admissions of Alex Dow, president of the company, as to alleged unfairness in the company's prevailing rate schedules.

Commissioner Waples, in a separate concurring opinion, acknowledged merit in the Toeppen-Goodman theory, under which a utility company would accumulate a reserve in good years to tide it over bad ones. He reached the conclusion that the company's valuation should be reduced, and its income cut about $2,250,000 a year, to bring its rate of return, on the basis of the adjusted valuation, down to 6 per cent. This rate of return, he declared, is adequate in the Detroit area but not elsewhere in Michigan.

Commissioner McClure had prepared an opinion favoring outright dismissal of the petitions for relief. He said he doubted whether Dow's admissions, unsupported by figures, constituted sufficient legal basis for a reduction order. *Re Detroit Edison Co.*

Other Important Rulings

THE Oklahoma commission has approved of a new zone area known as the "suburban zone area" created by the Oklahoma Gas & Electric Company to serve electric consumers of the company located on the outskirts of Oklahoma City between city subscribers proper and what is ordinarily termed rural subscribers. The rate schedules, rules, and regulations applicable to such service and the line extension policy were said to be in the nature of temporary and experimental practices and subject to change by the commission upon proper notice. The new rate schedule grew out of a complaint by suburban consumers. *Crosby et al. v. Oklahoma Gas & Electric Co.* (*Order No. 6408.*)

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*